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THE URSULINE CONVENT.

During the last eight years the opinion has been gaining strength, that the state of Massachusetts ought to make compensation to the sufferers by the Convent riot.[1] We have been unable to satisfy ourselves of the correctness of this opinion. We dissent with regret, because our feelings and sympathies prompt us to desire, that the most ample compensation should be made, if it can be done without a sacrifice of the principles of our political institutions. We advocate the least attractive side of the question. Our object is to ascertain truth. We trust that an argument conducted in a candid spirit, will not be unwelcome, or the motives which dictate it be misunderstood.

We concede and insist, that the religious faith of the sufferers ought to have no influence, either for or against them, in the decision of this question. No danger is to be apprehended in New England, from the adherents of the Roman Catholic religion. If this were the proper place we could show, why we hold this faith in far greater reverence, than the new dogmas which are springing up among us, and which, if their duration bore any proportion to their extravagance, would long ago have eaten out the heart of true and undefiled religion. We admit the claim of the Roman Catholics to the fullest enjoyment of the rights of civil and religious liberty. The little

[1] We would state, for the information of our more distant readers, that the Ursuline Convent at Charlestown, Mass. was destroyed on the night of August 11th, 1834, by a mob, excited by some utterly unfounded calumnies that had been circulated, with regard to the internal management and practices of the establishment. It is now admitted by all, who are not hopelessly sunk in ignorance and prejudice, that the institution, which was one of instruction as well as religion, was not merely harmless, but, both as to morals and intellect, of the very highest respectability.

community at Mount Benedict, reposing in the sacred weakness of womanhood and infancy, were discharging fearlessly and well the important duties to which they were devoted, when the ignorance and passions of a most brutal mob expelled them from the pleasant places of their habitation, and threw them houseless, and, but for the quick public sympathy, friendless upon the world. The spirit that would refuse compensation to these sufferers because they are catholics, is little better than that which kindled the incendiary torch. At the same time, we protest against any concession being made to them because they are catholics, which we should be unwilling to make to any of our citizens in like circumstances.

The simple question is, Ought the state to grant compensation to the owners of the property destroyed in the convent riot?

In the absence of express legislative provisions, civilized nations have not heretofore acted on the principle of making compensation for injuries inflicted by riotous mobs. In special cases, as in that of Lord Mansfield in 1780, reparation has been offered to individuals, but such instances have not been the results of the application of any general rule, but have been acts of grace on the part of governments having an uncontrolled power over the public wealth and interests. On such terms no compensation will be sought in this case. It is an act, not of grace, but of justice, that is asked for the sufferers, who rest their hopes on the equity of their claim.

If it is intended to be shown, that a state should indemnify those whose property is destroyed in popular tumults, the proposition amounts in effect to this; The state is bound to insure the property of those under its protection against the effects of illegal violence. This is stated in a very able report on the subject of the convent, made to the house of representatives of Massachusetts, at the winter session of 1842. The following is an extract from the report:

"We now propose to assert and maintain the following proposition: That there existed, at the time of the destruction of the Ursuline Convent and of the movable property contained in it, an implied contract between the state and each of the owners thereof, by which the state was bound to insure to such owner the preservation and dominion of his property against such a destruction; and that the failure to do this, creates a claim upon the state, in justice and equity, of the highest nature."

We agree with the report, that in ascertaining this duty, we must look higher than to the rules of the technical or written law. In considering topics like this, the practice and experience of the past are useful though not infallible guides. Let us look back upon the history of England, whose institutions form the basis of our own. We pass over the darkness of the Saxon period, though even through that, we can discern the glimmerings of the light of precedent, that is to guide us in our inquiry. Nearly eight hundred years have elapsed since the conquest. During all this time we find no such principle

as that above announced. No compensation was provided in cases of lawless destruction of property, either by the state, or any of its subordinate parts, until in the reign of George the First a statute [1] was passed, similar to our act of 1839, imposing unconditionally upon the local community, within the limits of which the outrage occurs, the burden of indemnification in certain cases of unlawful destruction of property. Another similar enactment has been recently made.[2] It is true, that by various legal provisions, originating, it is said, with the Saxon Alfred, and continued by statutes since the conquest, from the statute of Winchester,[3] down to what is called the Black Act,[4] in cases of robbery, and some other acts of violence, the local community, (generally if not always the hundred) within the limits of which the outrage occurred, has been made liable to indemnify the injured party. But by force of a qualification controlling all these enactments, the indemnification cannot be recovered if the community liable to be charged, succeed in bringing the offender to justice.[5] We have been unable to discover, that in case of the conviction of the offender, and consequent relief of the local community, any other mode of indemnification has been provided, except by the statutes above referred to. It is clear, therefore, that the object of the statute of Winchester, and others of the same class, has been not the indemnification of the sufferer, but the punishment of the guilty; not redress and reparation for the wrong, but atonement to the offended majesty of the king and law. The imposition of the burden of indemnification on the local community, in case of the escape of the offender, was intended as an inciting motive to the activity of the people, in his pursuit and conviction. It will appear from the references we have made above, that this was the opinion of Sir William Blackstone as to the intent of the early statutes against the hundreds.

It cannot be said that want of experience of evil has been the reason why the English legislature has deferred to so late a period, the adoption of this principle. Riot, rebellion and havoc disfigure every page of England's history. The experience of a thousand years has taught, that the power of the state, however effectual for the punishment of guilt, is utterly inadequate to the prevention of crime and the security of life and property. If the principles of religion, policy or jurisprudence prescribe the duty of indemnification from the state, it seems impossible, that the discovery should not have been made, long before the eighteenth century. For long ages, the parliament of England has contained within its halls sagacious statesmen, learned jurists, and reverend divines, who would eagerly have adopted any remedy pointed out by nature for an evil, which has constantly been pressing upon the country. This is the argument

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[1] 1 Geo. 1, ch. 5. [2] 7 Geo. 4, ch. 31. [3] 13 Edw. 1, ch. 1.
[4] 9 Geo. 1, ch. 22. [5] 3 Bl. Com. 160; 4 Bl. Com. 246, 293.

to be derived from English history. If it is not conclusive, it at least shows, that the principle of indemnification, even by the local community, is not, as has been supposed, a part of the unwritten law, or coeval with legal memory, but that it is the result of comparatively very modern statutory enactment. We shall presently consider, whether the imposition of the burden on the local community, amounts to a recognition of the duty on the part of the state.

We are unable to find any authority in support of this supposed duty of indemnification or insurance, in the works of any eminent writer on the natural law. We believe that it does not arise from the nature or equity of the social compact. Such a principle would lead to endless confusion, and, by very reasonable possibility, might involve the ruin of the people that adopted it.

The duty of indemnification is inferred from the other duty of protection, which the state owes to its members. It becomes necessary, therefore, to consider the nature of this duty of protection. The state is composed of weak and fallible men, whose faculties and perceptions are limited. It is surrounded by dangers, which human wisdom cannot foresee, nor human vigilance prevent. Among them are the tumults occasioned by the bad passions of bad men. The general conditions of our existence must be recognised and submitted to. Those who wish to join the community are free to do so. The inquiry of the individual who is about to choose his course in life is;—Where, in the circumstances in which I am placed, shall I have the best chance of happiness? The state, in reply, may be supposed to say, "Here are our institutions, here is our statute book. So much is written. Our character is to be found in history, and in our estimation by the world. Of the strength of the government, and the sanctions of the laws, each man must judge. We have no standing army, and but an ordinary police. We believe that a highly preventive system is liable to degenerate into tyranny. We therefore endeavor to live with the least possible quantity of government. We are the lovers of a liberal freedom. We leave much to education and to opinion. The common security is promoted by individual security. Tranquillity is the known interest of a vast majority. We admit you to a participation in the common lot. But there is a power and a possibility of evil which cannot be controlled. Your various rights may be assailed by illegal acts, which cannot be prevented, though they may be punished. We promise no indemnification for the possible result of these evils. No state has ever done so."

To afford absolute immunity from the accidents to which the condition of man is exposed, is not the expectation of society. Suppose any number of men, left in the liberty of nature, should meet in the wilderness, and make a compact for mutual protection. This compact imports nothing more, than such protection as the parties can give. If any of them are assailed, the community has discharged its

duty, when it has done all that was possible to ward off the danger and punish the offender. The loss must be borne by the individual who sustained the injury. In this relation towards each other were the little bodies of men, who reclaimed Massachusetts from the wilderness. They formed compacts for mutual defence. But the losses of particular villages were not made up from the general wealth. The case of older communities is exactly parallel. The outlines of the civil compact can best be traced in the most primitive condition of society. Puffendorf says,[1] "That men should be absolutely protected from mutual hurt, or that all injuries should be impossible, the condition of human things will not allow. Yet such care may be taken as that there shall be no probable grounds for the apprehension of danger. *And this security is the aim which men propose, when they submit themselves to the direction of others.*" He continues to remark, in a passage too long for literal quotation, that for these objects it is not enough, that men should promise that they will not steal, kill or offer other harm, but there must be added the fear of punishment, and the power of inflicting what is feared, and "thus the regard which men have for their own lives and safeties, secures mine." Yet notwithstanding these checks, violations of right will take place, "*which the condition of our nature and the circumstances of our affairs will not suffer us to prevent.*" But no mention is made of the duty of insurance, or indemnification.

The following passage is from Vattel,[2] and is particularly applicable to the case of a foreigner living under the protection of the state. "As it is impossible for the best regulated state, or for the most vigilant and absolute sovereign, to model at his pleasure all the actions of his subjects and to confine them on every occasion to the most exact obedience, it would be unjust to impute to the nation or the sovereign, every fault committed by the citizens. We ought not to say then, in general, that we have received an injury from a nation, because we have received it from one of its members." It is clear, then, that an absolute promise of security forms no part of the social compact, because it cannot be performed.

In the year 1839 the legislature of Massachusetts passed an act imposing upon the town, within the limits of which any destructive riot might occur, the burden of partial indemnification. It has been said that this act is an acknowledgment of the obligation of the state.[3]

It is the extremity of injustice for any community to seek a discharge from its own peculiar duty, by imposing it upon a portion only of its members. The duty of indemnification, it is said, results from that of protection. If so it cannot be avoided any more than that measure of protection to which the state is bound. The latter may with as great propriety be imposed upon the towns as the former.

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[1] Book 7, ch. 4, s. 3. [2] Book 2, ch. 6, s. 73.
[3] Report to house of representatives, 1842.

With as much justice might the burden of taxes, or that of the public defence, be evaded in the same way. In the valuation of 1841, the property of Charlestown is estimated at one seventy-sixth of that of the whole state. How can a fundamental duty of the entire community be imposed on this small portion of it? It is conceded, that there is no reason in principle, why the town, where a violent destruction of property occurs, should bear the loss. Experience may show the policy of such a provision, and the public will may sanction it, but there is no abstract principle of natural law, which directs us to impose the burden of reparation for an offence, on any other than the offender. It is said, that this burden is imposed on the town only as matter of policy, to awaken the diligence of the police. But we cannot throw our own burdens on our neighbors, in order to stimulate their industry. It is beneath the dignity of the state to substitute a regulation of police for the discharge of a great primary duty. This act of 1839, so far from being an admission of the duty of the state to indemnify, appears to us to be a very plain disavowal of it.

We believe the truth to be this. Civil society is an effort to attain as nearly as possible, to a perfection which can never be reached. It acts by prescribing duties, and imposing punishments for their violation. Cases not provided for arise continually, and are met by new and *general* legislation. It was unexpectedly found, that the existing laws were unavailing to repress such events as the Convent riot. The local population was prejudiced, the magistracy feeble and inert. It was no fault of the community that the evil was unforeseen. We did not dream, to what excesses the passionate weaknesses of human character were to lead. It was not suspected that there existed on our soil, a mob that would attack defenceless women, or that liberty of conscience would be violated in sight of the first field stricken for freedom. The committee relating to the destruction of the Ursuline Convent, appointed by the citizens of Boston, in 1834, expressly say, "It has come upon us like the shock of an earthquake, and has disclosed a state of society and public sentiment, of which we believe no man was before aware." The act of 1839, if passed before this occurrence, would have been odious as an aspersion on the character of our population. The public, not apprehending danger, was content with the existing laws, which afforded all the facilities which human institutions can give for the punishment of the rioters, and for compensation from their wealth. And this is all that any state is absolutely bound to do.

A question arises, whether, with all our experience, it would be wise to admit the principle of indemnification in our policy. That it has not been found in the past is a strong argument against it. The flames of the convent have shed no new light on the law of nature. This principle would tend to foster the mob-spirit, and to impair that watchfulness over his own rights, which the state expects of every citizen, and which now it is his interest to exercise. It might be

ruinous to the state, or at least so onerous as to injure its well being. It might place the public solvency at the mercy of an incendiary, perhaps of an enemy. Suppose such a disaster as the great fire in New York were to be occasioned by a riot. On this principle the state must bear the loss. The supposition is no idle fancy. It was nearly realized in London in the No-Popery riots; if a valuation were to be made of all the property unlawfully destroyed in England since the revolution, (the most quiet period of her history) and the result added to the national burdens, the finances of the realm would hardly bear the imposition.

If we have established the proposition, that the state does not, by virtue of the social compact, owe compensation to individuals, whose property has been destroyed in riots, there remains to be examined another question, which, with the former, covers the case before us, as it is to be regarded on general principles.

This question is — Is there any reason why the case of the convent should be excepted from the operation of the general rule?

There is no existing law, by virtue of which this indemnification can be made by the state. It will be conceded, that retrospective legislation is generally contrary to the principles of good policy. Special legislation is equally so. This indemnification would involve both.

As unoffending women, the sufferers by the convent riot have a strong claim on the sympathies of civilized humanity. As devout christians they demand the regard of a christian people. Their weakness invited attack, and, alas, their blameless and useful lives were insufficient to repel it. There were acts of peculiar atrocity attending this outrage, such as may not have occurred before. But the difference is in degree, and not in kind. It is not such as to evolve any new principle. What is there is the weakness or the sincere religious profession of these unfortunate women, that should cause them to be singled out from all other victims of wickedness, and entitle them to a novel and peculiar consideration, from the cold undiscriminating regards of public justice, trying their claim by the abstract principles, to which she is bound to adhere? They were too weak to resist the force exerted against them. So has been every person who has been injured by a mob. They were obnoxious to the popular prejudices, but so have been all other sufferers in like cases.

It is clearly the policy of government to confer no special privileges. Congress has repeatedly refused relief, in cases where the peculiar hardship of the circumstances, might if ever, have warranted a departure from principle. If there are instances where a contrary course has been pursued, it only proves, that by acting upon two contradictory principles, the legislature has been false to both. But we believe that there have been few such aberrations. The gift to La Fayette, and the pension system, which has been cited to illustrate the convent case, stand on a very different ground. They are

compensations made to persons standing in what is technically called, a meritorious position towards the state. Such persons have, it is true, no legal claim, but they have performed services, or suffered injuries, directly in behalf of the state, and the stipulated payment being found inadequate, the state is justified in opening and reforming the contract, and making farther compensation. The owners of the convent do not stand in this meritorious position. They are not to be preferred to any other body of citizens. Had an anti-tariff mob ever destroyed any of the great manufacturing establishments, little would have been said about compensation from the state. For the partial losses of the powerful do not so much excite sympathy, as the ruin of the weak. But who can say that a concession made in one of these cases, should be denied in the other. The liberty of industry is surely as much under the protection of the law, as the liberty of conscience.

Nearly at the time of the convent riot, an abolition tumult was excited in the streets of Boston. Unoffending females were insulted, property was destroyed, security was endangered, and the freedom of *private* debate was denied. In this case no indemnification has been asked or granted. The sufferers have quietly borne their wrongs, "biding their time," waiting in patient long suffering for the hour, when the blind opinion that has injured, shall become too weak to contend, with the enlightened opinion that will protect them.

What is the difference between this case, and that of the convent? One sentence will describe them both. The sufferers were obnoxious to an unlawful force, which they were unable to resist. Religious opinion and female weakness are not the sole or even the prominent objects of the protection of the law. Free opinion, free expression, free action on every subject, are the rights of all, and the strong arm of the law is stretched out over human weakness, whether owing to intellect, age, sex or religious faith. All the privileges of civil and religious liberty with which we are blessed, repose on the same basis of equal right. If the views against which we contend are correct, it follows that the state owes compensation in all cases, where the preventive power of society is insufficient for protection. The treasury must bear the loss inflicted in every popular tumult, from Shays's rebellion to the Broad street riot.

If the convent question were entirely isolated, no serious injury would follow from granting the indemnification. But by such a grant settled principles must be violated, or a new one introduced. Our halls of legislation will be besieged by applicants for the same favor or the same right. This individual question may be quieted, but others, without end, will be started in its place. The records of past disturbances will be drawn from oblivion. The wrongs of unsuccessful applicants will be made more insupportable by the sharp sense of injustice. It must have been a bitter aggravation of the sufferings of those, who lost all in the No-Popery riots, to know that an

offer of indemnification, beyond the law, had been made to one whose loss was to their own, as but a drop of blood compared to the pouring out of life. That Lord Mansfield himself thought so, may be inferred from his reply to the offer of the house of commons. He says;

"I apprehended no danger, and therefore took no precautions. But howsoever great my loss may be, I think it does not become me to claim or expect reparation from the state." [1]

Another great statesman has thus recorded his testimony; "*Vetant leges sacratæ, vetant duodecim tabulæ, leges privatis hominibus irrogari. Id est enim privilegium.... Hoc plebiscitum est? hæc lex? hæc rogatio est? hoc vos pati potestis? hoc ferre civitas, ut singuli cives singulis versiculis, e civitate tollantur?*" [2] No doubt, it is desirable that these injured women should be indemnified, but not at the expense of the state that is guiltless towards them. If we

> "once wrest the law to our authority,
> And for a great right do a little wrong,"

it needs little foresight to prophesy that

> "'Twill be recorded for a precedent,
> And many an error by the same example
> Will rush into the state."

If a special law may be enacted for the benefit of the individual, what certainty is there that one may not be obtained, against individual right and liberty? The principle is the same. It is a remark of Sir James Mackintosh, that "whatever requires an act of the legislature to legalize, must in its nature be illegal." [3]

Shortly before the conviction of Dr. Dodd for forgery, two men of the name of Perreau had been executed for a similar offence. Strong interest was made for the pardon of Dr. Dodd. The king turned for advice to his chancellor, Lord Thurlow, who merely said, "If Dodd is pardoned, the Perreaus have been murdered." The application of this anecdote is obvious. If the state make compensation to these sufferers by a special act, it admits that a principle has been violated in all cases where none has been made. It is consenting to every riot, that has taken place in Massachusetts, since the organization of the government.

The error of those who support this measure, is caused by their being led away by the most exalted feelings. A generous sympathy with the unfortunate must lead every good man to deplore this great act of violence. It was not anticipated. The only legal mode in which redress can now be given, is by private contribution, and it is to be hoped that this will be resorted to, and prove effectual. The

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[1] 5 London Law Magazine, 107.
[2] Cicero, pro domo sua.
[3] History of England, p. 273, Philadelphia ed.

state no doubt might enact a general retrospective law, that would meet this and all other cases of like character, that have occurred. But no one will advocate so wild a scheme of legislation. It is the evil of our age and country, that we endeavor to wrest individual cases from the operation of general rules. But let not this spirit be carried into the sanctuary of the laws. Let not our impulsive feelings be our guides in legislation. Generosity is a virtue of a secondary rank. She is only to be reverenced when she appears as the handmaid of justice. There are other questions of right and wrong in Charlestown, which should weigh more heavily on the public conscience than this riot at the convent. If we would relieve the indigent let us select those who have been made so by the violation of the public faith, in the matter of the Charlestown bridge. If we would do an act of charitable justice, let us remember those who have lost every thing in the Phœnix Bank, through the culpable negligence of the officer, whom we appointed to look after the public interests. We do not now say that these claims should be satisfied, but until they are, there is little propriety in calling up the question of the Convent.

There are possibly objections to this indemnification, arising from our local constitutional law. These we have neither space nor inclination to enter upon. If, by the principles of the natural law, these sufferers are entitled to the redress that is demanded, we should deeply regret their being debarred from it by the forms of the constitution. But before it becomes necessary to resort to those forms, we believe the question must be decided.

We have stated our reasons for thinking that the state should make no indemnification in the case of the Ursuline Convent. We oppose the measure, solely because we believe it unjust and illegal, and "inconsistent with ascertained and settled public policy."[1] We sincerely believe that this is the truly conservative opinion on the subject. We have carefully avoided all appeals to the passions, all popular and *ad captandum* arguments, though our path has been thickly strown with them. We would gladly be convinced of error, that our feelings and our judgment might be reconciled. If there be any reasonable doubt, the subject should be calmly and fairly discussed, so that in the conflict of opinions the truth may be made known.

J. C.

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[1] We extract this passage from a very able and eloquent essay on the subject of the Convent, recently published by Messrs. Little and Brown, from the pen of the author of the report to the legislature, to which we have referred. We do not profess to have been engaged in a formal answer to these productions, though from their being the most authoritative and prominent discussions in favor of the duty of indemnification, we have been compelled, to some extent, to follow the same course of argument. Our object has been simply to present, to the best of our ability, the argument on what we consider the correct view of the question.

RECENT AMERICAN DECISIONS.

Circuit Court of the United States, Massachusetts, December, 1842, *at Boston. In Bankruptcy.*

In the matter of Enoch Cook.

The doctrine of this court in the case of *Ex Parte Foster*, (5 Law Reporter, 55,) re-stated and affirmed.

The lien of a judgment upon property, attached on the writ, in Massachusetts, is within the proviso of the second section of the bankrupt act of 1841, and saved thereby, and is wholly unaffected by the proceedings in bankruptcy, when it has been obtained in the regular course, before any petition, or decree, or discharge in bankruptcy.

Where property was attached upon mesne process, and *after judgment was obtained*, the defendant filed his petition to be decreed a bankrupt; it was *held*, that the right of the attaching creditor had attached absolutely to the property, and by the law of Massachusetts, remained a fixed and permanent lien, for thirty days after the judgment, by means of which the creditor, at his election, might obtain a preference of satisfaction out of the property attached over all other creditors.

This case was adjourned in the circuit court upon the following statement of facts:

The president, directors, and company of the Charlestown Bank, a corporation, created by a law of the commonwealth of Massachusetts, and having its place of business in Charlestown, in the said commonwealth, heretofore sued out three several writs of attachment against the said Enoch Cook, upon which, personal property was attached, and which was returnable to the court of common pleas for the county of Middlesex, and commonwealth aforesaid, at the September term thereof, A. D. 1842. The actions were entered, and judgment was recovered against the said Cook by default, on the twelfth day of September aforesaid. On the thirteenth day of the said September, the said Cook filed his petition in common form for relief under the bankrupt act, and in the schedule annexed to his petition, was enumerated the property heretofore attached by the said corporation. Order of notice upon the said petition was issued returnable on the first Tuesday of November. Executions duly issued upon the said judgments recovered by the said corporation against the said Cook, and they were duly levied upon the property attached on the sixth day of October, A. D. 1842. A portion of the said property was advertised for sale on the twelfth day of the said October, and another portion for a subsequent day. The said Cook, on the eleventh day of the said October, presented a petition to the honorable, the district judge of the United States, for the district of Massachusetts, for an injunction against the sale of the said property and

the satisfaction of the said judgments out of the same, on which order of notice to show cause issued, returnable on the twelfth day of the said October. The question was briefly spoken to before the honorable the district judge, but was not decided by him, and, at his suggestion, the parties entered into an agreement, by which, the property and the proceeds of the property were to be retained in the hands of officers by whom it had been attached, subject to the decision of the circuit court. Under these circumstances, the question is now presented to the consideration of the circuit court, whether the said injunction shall be dissolved. The said Enoch Cook has been declared a bankrupt, according to his said petition.

Upon this statement, the question whether the injunction there referred to shall be dissolved, was adjourned by the district court into this court.

The case was shortly spoken to by *B. R. Curtis*, for the respondents, and by *George S. Hillard*, for the petitioner. The following cases were cited. *Martin* v. *Martin*, (1 Ves. R. 211, 213); *Drewry* v. *Thacker*, (3 Swanst. R. 529); *Lee* v. *Park*, (1 Keen, R. 714); *Ex Parte Foster*, (5 Law Reporter, 55); Drewry on Injunctions, 111; *Clarke* v. *Lord Ormonde*, (Jacob's R. 108, 124.)

Story J. It has been a matter of surprise to me, to see how greatly the case of *Ex Parte Foster*, (5 Law Reporter, 55,) has been misunderstood and misinterpreted. A great deal of the preliminary reasoning in that case was employed in the discussion of points, raised by the elaborate arguments of counsel, which seemed necessary to clear the way for the decision of the point, actually presented to the court by the adjourned question. That decision was, that an attachment commenced under the Massachusetts laws by a creditor against his debtor in a suit for his debt, and which suit had not as yet arrived at the stage, in which the pleadings closed, or are even put in, is not such an absolute lien as is entitled to protection and priority under the act of congress, but is a contingent lien dependent upon the creditor's obtaining a judgment in the suit. That if the debtor proceeding in bankruptcy should be decreed a bankrupt, and should receive a discharge under the act, that discharge could be pleaded as a good bar to the suit in the nature of a plea *puis darrien continuance*; and that consequently, under such circumstances, the district court, acting in bankruptcy, ought not to permit the creditor, pending the proceedings in bankruptcy, and before it was possible for the debtor to obtain a discharge in a race of diligence, to obtain a judgment, which should give him a priority of satisfaction over the general creditors, out of the property attached in his suit. Consequently the creditor ought to be enjoined against farther proceedings in his suit, except so far as the district court should allow, until it should be ascertained, whether the debtor obtained his discharge or not. If he did not obtain his discharge, then the creditor might be at liberty to proceed and get judg-

ment, and thus to perfect his lien under his attachment, by following it up by a seizure of the property in execution, which might, under such circumstances, (for the court gave no opinion on the point,) give him an unconditional priority of satisfaction out of the same. So that the effect of the injunction was not, to annul the attachment, but only to suspend proceedings in the suit, until it could be ascertained, whether the bankrupt had a good bar or defence upon the merits to the suit, or the creditor had an absolute right to judgment therein.

No question arose, in that case, as to what would be the effect, if the creditor had proceeded to judgment in his suit, before the petition in bankruptcy was filed by the party, praying to be declared a bankrupt, (which is the very point now presented for consideration,) and, therefore, the effect of a judgment was only incidentally discussed; and yet, as far as it was discussed, the court pointed out the obvious distinction between the case of a supposed lien by an attachment of property before judgment, and the case of such a lien by attachment after judgment. In the former case, the lien was contingent and conditional, waiting upon the judgment; in the latter, it was absolute and binding at the election of the creditor as a means of satisfying the judgment.

Then came the case of *Parker and Blanchard* v. *Muggridge and others, in bankruptcy*, (5 Law Reporter, 351,) where the very distinction was taken, and strongly insisted upon by the court. That case having been founded upon contracts between the parties, as to the attachment and management of the suit, and the judgment having been in pursuance of those contracts, did not directly involve the present question, as the court decided it upon the mere footing of those contracts. The present case is, therefore, distinguishable, it being a mere proceeding by attachment by the creditor against the debtor, in invitum, without the interposition of any such contracts.

I have no doubt whatsoever, that no injunction ought to be awarded by the district court in the case now before the court upon the facts stated. The proceedings in bankruptcy after the judgment can have no effect whatsoever upon that judgment, or upon the property attached in the suit. The creditors, by their judgment, have made their right, (call it if you please, their lien,) perfect under the attachment. It is no longer a conditional, or contingent right, but it has attached absolutely to the property, and by the laws of Massachusetts; it remains a fixed and positive lien for thirty days after the judgment, by means of which, the creditor, at his election, may obtain a preference of satisfaction out of the property attached, over all other creditors. Of that election the court has no authority to deprive him, or by an injunction, to obstruct or stop his proceedings on his execution. If the bankrupt should obtain his discharge, it would be no bar or defence to the due execution and satisfaction of that judgment in the regular course of proceedings thereon; for the debtor, after the judgment, has no day in court to plead any bar or defence. In short, after judg-

ment, the case is precisely the same in legal intendment under the laws of Massachusetts, as the lien of a judgment at the common law on the real estate of the debtor. I never have doubted, that the lien of a judgment at the common law upon real estate since the statute of Westminster, 13 Edw. 1 stat. 1 ch. 18, which has been adopted in many states in the union, is within the proviso of the second section of the bankrupt act of 1841, and saved thereby, and is wholly unaffected by the proceedings in bankruptcy, when it has been obtained in the regular course, before any petition or decree or discharge in bankruptcy.

My attention has been drawn to several cases in the courts of equity in England, bearing upon the merits of the present case. If those cases are adverse to the doctrine, which I have already stated, it is not, that they stand upon any wrong principle; but that they were decided upon general reasoning and equitable, considerations applicable to cases of administrations in England; whereas the present question must be decided upon the true meaning of the proviso in our own statute of bankruptcy, which must of course control and govern all such general reasoning and equitable considerations.

But upon a careful examination of the authorities, there does not appear to me any ground to doubt, that the present doctrine in England is coincident with that, which this court maintains. The case of *Martin* v. *Martin*, (1 Ves. R. 211, 213,) was one, where a creditor's bill was filed, and after the decree to account, the particular creditor was restrained from proceeding at law, and very properly restrained; for the decree was equivalent to a judgment for all the creditors, and yet could not be pleaded at law to the suit of the creditor, for courts of law do not take cognizance of decrees in equity. But Lord Hardwicke there said, that a decree in equity is equal to a judgment at law, and then a preference will be given in priority of time only, as in judgments in the courts of law. This plainly admits, that if the judgment is before the decree, it overrides the decree. And, indeed, so his lordship expressly admitted, saying that if the creditor suing at law, obtains judgment first, he must be first satisfied, as he will then gain a preference in course of administration, both in law and equity.[1] *Drewry* v. *Thacker*, (3 Swanst. R. 529) does not interfere with this doctrine. There, the creditor before the decree for an administration of the assets had obtained a judgment at law against the administrator *de bonis intestatoris, et si non, de bonis propriis;* and the question was, whether the court would by injunction, stop the creditor from proceeding to execute his judgment in both respects, *de bonis intestatoris*, and *de bonis propriis*. The vice chancellor (Sir John Leach), granted the injunction; but lord Eldon refused upon appeal to confirm it. But the point was not absolutely decided.

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[1] See the general doctrine stated in *Morrice* v. *The Bank of England*, (Cas. Temp. Talbot 217, S. C. 3 Swanst. 573.)

There is a dictum of Lord Eldon in *Clarke* v. *The Earl of Ormonde*, (Jacob's Rep. 108, 124,) where he said; "Even if a creditor has got a judgment before the decree, though he may come in and prove as such, he must not take out execution." Possibly this may be true *sub modo* in some cases, and under some circumstances; but as lord Langdale justly observed in *Lee* v. *Parke*, (1 Kean's R. 724,) this is not the ordinary rule. And in the case before him, turning upon very special circumstances, he decreed an injunction. In *Price* v. *Evans*, (4 Sim. R. 514,) the judgment was before the decree; and in *Kent* v. *Pickering*, (5 Sim. R. 569,) although it does not appear, whether the judgment or decree was first, the court granted an injunction only to restrain the creditor from proceeding at law against the assets; but not from proceeding against the executor *de bonis propriis*. I should rather gather from the report, that the decree was first; and so it seems to have been understood by a learned author on injunctions.[1]

Upon the whole, my opinion is, that the injunction granted in this case, ought to be dissolved, and I shall direct a certificate accordingly, to the district court.

Circuit Court of the United States, New Hampshire District, December, 1842. *In Bankruptcy.*

IN THE MATTER OF DUTTON AND RICHARDSON v. OTIS R. FREEMAN.

A person may be "interested" in a bankruptcy, and have a right to establish his debt, but it does not follow, that he has a right to appear and contest every question, which may arise in the progress of the proceedings under the bankruptcy.

The language of the bankrupt act in reference to "persons interested" applies to those, who have a direct, immediate interest in the matter put in controversy, and not merely a remote, consequential, or contingent interest.

Upon a petition by creditors, *in invitum*, against their debtor to have him declared a bankrupt, the debtor alone is properly the "person interested" to appear and contest the facts stated as the grounds for the petition.

Where A attached the property of B on mesne process, and C, another creditor of B, filed a petition *in invitum* to have B declared a bankrupt, and also obtained an injunction against A from proceeding in his said suit until the hearing on the petition in bankruptcy; it was *held*, that A had no right to appear and contest the facts asserted in the original petition of C to maintain a decree of bankruptcy against B.

A party will not be permitted to exercise the rights of a creditor in the proceedings in bankruptcy, until he has proved his debt; but where the proof is not regularly or technically made, it is amendable under the authority of the court.

Creditors, who prove their debts in bankruptcy, must do so absolutely, without any protest, or qualification, or reservation.

As to the effect of a proof of his debt by the creditor under the circumstances of the present case; — *quære*.

THIS was the case of a petition in bankruptcy, by Dutton and Richard-

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[1] See Drewry on Injunctions, part 1, ch. 4, p. 115, 122.

son, in the district court of the district of New Hampshire, praying that Otis R. Freeman might be declared a bankrupt, under the bankrupt act of 1841, ch. 9, and alleging certain specified acts of bankruptcy to have been committed by Freeman. Freeman appeared and made answer, denying all the supposed acts of bankruptcy, and contested the right of the petitioners to a decree. At this stage of the proceedings, and before any hearing or decree upon the petition and answer, or any proofs taken upon the points in issue, Edward Brinley, a creditor of Freeman, appeared before the district court, and filed the following petition:

"Respectfully represents, Edward Brinley, of Boston, in the county of Suffolk, and commonwealth of Massachusetts, merchant, that the said Otis R. Freeman is justly and truly indebted to your petitioner in the sum of two thousand dollars and upwards, upon three several promissory notes, and upon an account; that your said petitioner caused a writ of attachment to be issued in his favor against said Freeman, founded upon said notes and account, upon which writ property of said Freeman was attached, sufficient to satisfy your petitioner's claim, which said writ was returnable to the court of common pleas for Grafton county, in the state of New Hampshire, at the February term of said court, A. D. 1842, when and where said writ was returned, and duly entered, at said term of said court, when and where the action brought against said Freeman was continued to the next September term of said court, during which said term, to wit, September term, 1842, an injunction, issued by the district court of the United States for the district of New Hampshire, upon the petition of said Dutton and Richardson, was served upon the agent of your petitioner, W. C. Horton, his attorney in said suit, Wm. H. Duncan, and the sheriff of the county of Grafton, enjoining your petitioner, his agents and attorneys, and the sheriff of said Grafton county from further proceedings in said suit, till further proceedings were had upon the petition of said Dutton and Richardson in this court. Whereupon said action was continued to the next February term of said court of common pleas, in which court the said action is now pending. Said action was commenced on or about the 28th of August, A. D. 1841. And now your petitioner further prays, that he may be admitted to oppose the prayer of the petition of said Dutton and Richardson, without furnishing any further proof of the indebtedness of said Freeman to your petitioner, or of the interest that your petitioner has to oppose the petition of Dutton and Richardson aforesaid, than what arises from the foregoing statement of facts."

And he also filed the following proof of his debt, with the annexed protest:

"Respectfully represents, Edward Brinley, of Boston, in the county of Suffolk, and commonwealth of Massachusetts, merchant, that on the 19th of October, A. D. 1842, he proved a debt of two thousand dollars and upwards against said Freeman, upon the several

promissory notes and an account, in short, setting forth particularly the said notes and account, and in his said proof stated, that he had not received any security for said debt, except what he may have obtained by an attachment made of the property of said Freeman, on or about the 28th September, A. D. 1841. The proof of said debt was made before a commissioner of this court, and was in the usual form, with the above exceptions. Said proof was accompanied by a protest, as follows:

[I make proof of my debt against said Freeman, under the following circumstances, to wit: — Sometime in the month of August or September, A. D. 1841, I brought an action against said Freeman, upon said notes and account, and upon the writ which issued in said action, sufficient property of the defendant was attached to satisfy my claim, as I have been informed. Said writ was returnable to the court of common pleas for Grafton county, in said state of New Hampshire, February term, A. D. 1842, when and where said action was entered, and continued to the next September term of said court, when and where, to wit, at said September, 1842, an injunction was issued and served, enjoining my agents and attorneys, and the sheriff of said county of Grafton from further proceeding in my said suit, till further proceedings were had in this court, — whereupon said action was continued to the next February term of the court of common pleas, for the said county of Grafton, and is now pending in said court. I make proof of my debt solely for the purpose of defending against the said petition of said Dutton and Richardson, and for no other purpose — protesting, that by so doing, I do not waive my right of action or suit against said Freeman, nor surrender any proceedings already commenced, or which may be commenced by me in the state courts against said Freeman.]

"And now your petitioner prays to be admitted to oppose the prayer of said Dutton and Richardson's petition upon the proof, made as aforesaid, accompanied by said protest. *William H. Duncan,* solicitor for Edward Brinley."

To this petition Dutton and Richardson filed the following exceptive allegation:

Respectfully represent, said Dutton and Richardson, that Edward Brinley, of Boston, in the district of Massachusetts, has filed in said court proof of his debts as creditor, against the said Otis R. Freeman, and claims to appear and object to the said Freeman being declared a bankrupt. And now the said Dutton and Richardson file their objections following to the said Brinley's proof of his pretended debts against said Freeman, and to his being permitted to appear and object to the said Freeman being declared a bankrupt. (1.) Because the said Brinley, in his proof of his debts, does not describe the date or amount of his several promissory notes against said Freeman, or otherwise describe them with the particularity required by the law. (2.) Because said Brinley offers said proof of his debts, accom-

panied with a protest, refusing to waive his right to proceed in the court of common pleas for the county of Grafton, in said district, in the prosecution of a suit now pending in said court of common pleas, in his favor, against said Freeman on his said debts. And on said objections the said Dutton and Richardson ask the opinion of the court.

Upon these proceedings the district court ordered the following questions to be adjourned into the circuit court for a final decision:

First. Whether the petitioner, Edward Brinley, shall be admitted to defend against the petition of Dutton and Richardson upon the statement of facts contained in the petition hereunto annexed, marked (B), the said facts having been agreed upon by said parties, without waiving his right to proceed in the state courts.

Second. Whether the description of said Brinley's debt, as set forth in the proof of debt as described in paper hereunto annexed, marked (C) is sufficient.

Third. Whether said Brinley's proof of his debt, being accompanied with a protest refusing to waive his right to proceed with his action now pending in the state courts against said Freeman, is sufficient to authorize the said Brinley to appear and oppose the petition of Dutton and Richardson.

The cause was argued by *Duncan*, of Hanover, N. H., and *P. W. Chandler*, of Boston, for the petitioner Brinley; and by *Blaisdell*, of Hanover, N. H., and *Brigham*, of Boston, for Dutton and Richardson. Freeman did not appear at the hearing.

Story J. The first question is that, which embraces the merits of the controversy, so far as it respects the rights of the parties now before the court. Brinley, the attaching creditor, insists upon the right to appear in the present stage of the proceedings, and to contest the whole facts asserted in the original petition of Dutton and Richardson to maintain a decree of bankruptcy against Freeman, *in invitum*. And the petitioning creditors insist, that he has no such right.

My opinion is, that Brinley, the attaching creditor, has no such right under the provisions of the bankrupt act. It may be admitted, that he is, in the sense of the act, a "person interested" in the bankruptcy; but that is not the sole point for the consideration of the court. A person may be interested in a bankruptcy, and have a right, as a creditor, to establish his debt; but it will by no means follow, that he has a right to appear and contest every question, which may arise in the progress of the proceedings under the bankruptcy. The act of congress could by no means have intended any such a general and sweeping right. Its language must, in its reasonable interpretation, be limited to cases, where the "person interested" has a direct immediate interest in the matter put in controversy, such as a creditor has when his own debt or dividend is controverted by the bankrupt or

the assignee, and not merely a remote, consequential, or contingent interest in the question to be decided. In this latter sense every creditor might be said to be interested in every question and decision made in bankruptcy, and clothed with full rights accordingly, which I am persuaded could never have been the intention of the act. The distinction between an interest in the question and an interest in the suit is familiar to every lawyer; and we must put a reasonable and analogous interpretation upon the language of the bankrupt act in order to prevent the most inconvenient and even contradictory results, which might otherwise arise from it.

The seventh section of the bankrupt act contemplates proceedings by petition, both by a voluntary bankrupt, and by creditors against an involuntary bankrupt; and, after requiring that notice of the hearing of every such petition for the benefit of the act shall be published, it provides that "all persons interested may appear at the time and place, where the hearing is to be had, and show cause, why the prayer of the said petitioner should not be granted." Now, upon a petition by creditors, *in invitum*, against their debtor to have him declared a bankrupt, (which is the present case,) the debtor alone is properly the "person interested" to appear and contest the facts stated as the grounds for the petition — namely, the petitioning creditors' debt — the debtor's being a trader, and his having committed one or more acts of bankruptcy, within the scope of the statute. All these touch the rights and property of the debtor himself, directly and immediately, and he is the very party in interest to admit or to contest them. His creditors have no direct or immediate or absolute interest in the proceedings. If declared a bankrupt, he may never obtain a discharge; and, therefore, they have no necessary or positive interest in the proceedings at this stage, or at most only a possibility of interest, dependent altogether upon future events.

But I do not rest my judgment upon these considerations, although there appears to me to be great weight in them, as a reasonable construction of the provisions of the act, as to "persons interested." What I rely on is the positive provision of the first section of the act, as a demonstration, that such is the proper, nay, the necessary construction of the act in all cases of petitions by creditors, *in invitum*, against their debtor, to have him declared a bankrupt. That section provides, "That any person so declared a bankrupt at the instance of a creditor, may, at his election, by petition to such court, within ten days after its decree, (declaring him a bankrupt) be entitled to a trial by jury, before such court, to ascertain the fact of such bankruptcy." Now, it is plain from the very terms of this enactment, that this is a privilege exclusively given to the debtor himself. He, and he alone can demand a trial by jury; he and he alone can contest the "fact of bankruptcy." No other creditors can appear as adverse parties, and contest the "fact of such bankruptcy;" for here the maxim firmly applies, *Expressio unius personæ est exclusio alterius.* Yet the

"fact of such bankruptcy" is the very question, which Brinley by his petition seeks now to controvert before the court, and to put in issue. He seeks to supersede the debtor in his proceedings, or to act independently of him. Suppose the debtor should not choose to contest "the fact of such bankruptcy," or suppose, after contesting it, he is satisfied with the decision of the court, declaring him a bankrupt, or suppose the jury upon a trial should find "the fact of such bankruptcy," could other creditors be permitted to appear and contest the conclusion? It appears to me upon the obvious purport of this provision of the statute, they could not. In short, the view, which I take of this whole matter is, that in this stage of the proceedings against a debtor, *in invitum*, the only persons in interest, who are competent to appear and enter into contestation, as to the "fact of such bankruptcy" are the petitioning creditors on one side, and the debtor on the other side, as the parties in adverse interest. All other creditors are but collaterally connected with these preliminary proceedings, and may contingently be affected thereby; but they are not persons having a right to present themselves in judgment before the court, or, as the phrase is, they have no *persona standi in judicio.*

The second and third questions may be disposed of in a few words. If Brinley had a right to appear and contest the proceedings, it could be only in the character of a creditor of Freeman; and before he could be admitted to examine the rights of another creditor, he must prove his debt in the manner pointed out by the statute, and the rules of the court. The proof in this case is not regularly or technically made; but it is clear, that if insufficient in its form, it is properly amendable under the authority of the court.

The third question may be answered by the single suggestion, that upon the proof of any debt by a creditor he must make it *simpliciter*, according to the rules of the court, and he is not at liberty to interpose any protest or qualifications, or reservations. Indeed, I go further, and say, that the court would have no authority to allow or sanction them. What would be the effect of an absolute proof of his debt by Brinley upon his attachment, it is unnecessary for this court now to consider. That is a point, which cannot be entertained now; and belongs, if at all, to a future state of these proceedings.

Upon the whole, my answer to the several questions adjourned into this court are these. To the first, that Brinley ought not in this stage of the proceedings, upon the statement of facts in his petition, to be admitted to appear and contest the facts, stated in the petition of Dutton and Richardson. To the second, that the description of Brinley's debt, as set forth in his proof of debt in the case, is not sufficient; but the proof is amendable under the order of the court. To the third; that Brinley's proof of his debt being accompanied with a protest, as stated in the question, is improper, no such protest being allowable, and is not sufficient to authorize him to appear and oppose the petition of Dutton and Richardson.

District Court of the United States, Maine, November, 1842, *at Portland. In Bankruptcy.*

JANE SHAW, BY HER NEXT FRIEND, AND ALPHEUS SHAW, *v.* NATHANIEL MITCHELL, ASSIGNEE.

Where property descended to the wife of a bankrupt before a decree of bankruptcy, and at that time he had not reduced it into possession, it was *held*, that the wife was in equity entitled to an allowance out of the property for her support against the assignee of the bankrupt.

THIS was a petition by Jane Shaw, wife of Alpheus Shaw, who was decreed a bankrupt March 2, 1842, praying that certain notes, which had descended to her from her father, and which were included in the schedule of the bankrupt's property annexed to his petition and delivered to his assignee, may be re-delivered to the administrator of her father's estate, in order that the same may be administered by him and distributed to her as her distributive portion of her father's estate. The following were the material facts. Mr. Doughty, the father of Mrs. Shaw, died September 4, 1838, leaving four children, and certain notes, secured by mortgage, which was all the property that descended. Mr. Shaw was regularly appointed administrator December 4, 1838. The notes in question came into his hands as administrator, and so remained, nothing having been paid upon them, until the decree of bankruptcy and the appointment of an assignee. They were included in the schedule of his property and delivered to his assignee. No distribution had been made of the estate by the administrator, and no account had been settled at the probate court, but the notes still remained due and unpaid. Mr. Shaw had also filed a petition that the assignee might be ordered to relinquish the notes and restore them to him in his quality of administrator, to be administered and distributed according to law, and for the payment of the debts of the deceased, if necessary for that purpose. Notice of the petition was acknowledged by the assignee and the case was submitted to the court on the facts stated in the petitions, which were not controverted.

WARE J. This case has been submitted on the facts disclosed in the petition of Mrs. Shaw and the bankrupt, which are admitted to be true, for the purpose of having the right of the assignee and the petitioner determined by the court. By the common law, marriage amounts to an absolute gift to the husband of all the personal goods and chattels of the wife, of which she is in possession at the time of the marriage in her own right, and also of all that may accrue to her during the marriage. With respect to such of the wife's personal property as is not in possession, as debts due to her by contract, or

money coming to her by inheritance, these do not pass to the husband as an absolute gift. (2 Story's Equity, § 1402.) Such choses in action are a qualified gift. He has a right to sue for and recover them, but they do not become absolutely his until he has reduced them into his possession. And the same principle applies whether they belong to her at the time of marriage, or accrue to her during coverture. A legacy or a distributive share of an inheritance accrues to her, it is true, for the benefit of her husband, but these do not become at once incorporated into the general mass of his property without distinction. They bear an ear mark, if such an expression may be allowed, by which they are discriminated from his other property ; and if he dies without reducing them into his possession, they do not go to his administrator, but survive to the wife, and she is entitled to them against the personal representative of the husband. And the choses in action of the wife as debts due to her, or stock standing in her name, are not reduced into the husband's possession so as to exclude the wife's title by survivorship, merely by the notes or certificates, that is, the evidences of property coming into his hands. *Wildman* v. *Wildman*, (9 Vesey, 174.) The debts due to the wife are not reduced to the legal possession of the husband until the money is paid ; or having the present power to reduce them into possession, he has assigned them for a valuable consideration. *Purdew* v. *Jackson*, (1 Russell's Rep. 66.) *Honner* v. *Morton*, (3 Russell's Rep. 65.) A judgment in the lifetime of the husband, it seems, is not sufficient, at least unless the suit was in the name of the husband alone. (2 Story's Equity, § 1405 ; 2 Kent's Comm. 137.) If he dies in the life time of his wife before this is done, her choses in action will survive to her and not go to his personal representative.

But although the husband has only a qualified interest in his wife's choses in action, he has always the power of making that absolute by a reduction of them into his actual possession ; nor does the common law furnish the wife any means of preventing the husband from so reducing them into his possession as wholly to extinguish her separate interest. But courts of equity have long been in the habit of interposing to protect the interest of the wife. Whenever the husband is obliged to seek the aid of a court of equity to obtain possession of the wife's property, the court will give its aid only on the condition, that the husband settle part of the property on the wife, to be held for her benefit independent of the husband and his creditors. This right of the wife to a reasonable provision out of her own property for the support of herself and her children, is called the wife's equity. The general principle on which the court interpose in her favor, is said to be that he who seeks equity shall do equity ; and the present disposition of courts seems to be rather to enlarge than curtail the beneficial operation of the rule in favor of married women.

This is the established rule in all cases where the husband himself,

or his general assignee for the payment of debts, or under insolvent laws, or in bankruptcy, is obliged to have recourse to a court of equity to obtain possession of the wife's personal property. Ordinarily, it is said, that courts of equity will not interfere to control the husband when using the common remedies of the law to obtain the possession of such property. But it is admitted that this rule is subject to some exceptions. Where a legacy to a wife is sued for in the ecclesiastical courts, it is settled that an injunction will be allowed to enforce the equity of the wife. (2 Story's Equity, § 1403.) And for the same reason it has been said that a suit at law for a legacy, or a distributive share of an inheritance, which has descended to a married woman ought to be restrained, because such rights of action are of an equitable nature and of equitable cognizance. 2 Kent's Comm. 140, 4th edit. *Haviland* v. *Bloom*, (6 John. Ch. R.) Indeed upon the ground on which the courts of equity interfere at all, that is, that it is equitable that the wife should have a support secured to her out of her own property and placed beyond the reach of the husband and his creditors, it is not easy to perceive what just and reasonable distinction can be made between her legal and equitable rights of action. And it has been suggested by high authority that no such distinction ought to be allowed, but that the court ought on the principles of justice to restrain the husband from availing himself of any means at law or in equity from possessing himself of his wife's property in action, except on the condition of making a competent provision for her. (2 Kent's Comm. 139; Story's Equity, § 1403, note.)

From this view of the law, it appears to me that the wife would be entitled to her equity out of this property against her husband. It is property which has descended to her by inheritance. It has never by the husband been reduced to possession, but was at the time of the bankruptcy in the hands of the administrator of the estate of her deceased father. It makes no difference that the husband in this case was the administrator. For he holds this property not in his personal but in his representative character, and like every other administrator, is bound to account for it to those who are legally and equitably entitled to it. The case has occurred in which the wife's equity attaches in all its strength, the husband having by bankruptcy been deprived of the means of supporting his wife and her children. It is property, as observed by chancellor Kent, of an equitable nature and of equitable jurisdiction. If the husband had died after the bankruptcy, it is clearly settled that the wife would have been entitled to the whole fund by survivorship. *Pierce* v. *Thornby*, (2 Simons's Rep. 167.) The case appears to me to fall within the general principles on which this jurisdiction is exercised by courts of equity. And as this court, sitting in bankruptcy, has all the powers of a court of general equity jurisdiction, it has the authority to allow the claim of the petitioner. If it would be allowed against the husband, it will be equally against his assignee.

An assignment by operation of law in bankruptcy, passes the property in the same plight and condition as it was possessed by the bankrupt himself, and subject to all the equities that affected it in his hands. (2 Story's Equity, § 1411.) *Mitford* v. *Mitford*, (9 Vesey, 100.)

What proportion of the property ought to be allowed to the wife is a proper subject of inquiry before a master, and a reference to a master will be made for that purpose.

District Court of the United States, Massachusetts, December, 1842, *at Boston. In Bankruptcy.*

IN THE MATTER OF GEORGE W. LOTHROP.

The only remedy of a bankrupt, where a majority in number and interest of his creditors file their written dissent to his discharge, is to demand a trial by jury.

THIS matter came up for a hearing upon the bankrupt's application for a discharge. A majority in number and value of the creditors who had proved their debts, appeared to resist the application, and filed their dissent in writing. A hearing was sought by the bankrupt before the Judge alone, and a preliminary question arose as to his rights under the fourth section of the act, which provides, "that if, in case of bankruptcy, a majority, in number and value, of the creditors who shall have proved their debts at the time of hearing of the petition, &c., shall at such hearing file their written dissent to the allowance of a discharge and certificate to such bankrupt, or if, upon such hearing, a discharge shall not be granted to him, the bankrupt may demand a trial by jury upon a proper issue to be directed by the court, at such time and place and in such manner as the court may order; or he may appeal from that decision, &c., to the circuit court.

George Alexander Smith, for the bankrupt, contended that he had a right to be heard in the first instance by the court, and in case a discharge was refused, then to demand a jury, or appeal to the circuit court.

Charles Theodore Russell for the creditors.

SPRAGUE J. after remarking that the provision was not free from obscurity, decided, that where *a majority in number and value of the creditors* file their written dissent to the bankrupt's discharge, the only alternative left to him is to acquiesce in that dissent, or demand a trial by jury. In other words, that the only mode of trying the issue between the bankrupt and the opposing creditors, is by jury, and that he is not entitled in this case to be heard by the court, and then, in case of a refusal to grant a discharge, demand a trial by jury, or appeal to the circuit court. This case was accordingly ordered to be heard by a jury.

District Court of the United States, Western District of Pennsylvania, September, 1842. *In Bankruptcy.*

In the Matter of Chadwick and Leavitt.

The meaning of the word "future" in the second section of the bankrupt act, is future with reference to the day when the act was to take effect. [See *Hutchins* v. *Taylor*, ante, 289.

An assignment made by debtors subsequent to the passage of the bankrupt act, but before it was to go into operation, of all their property, in trust for certain preferred creditors, will not prevent their discharge and certificate under the act, on their voluntary petition.

The facts in these cases sufficiently appear in the opinion of the court. The case of Chadwick was argued by *Hampton* and *Black* for the bankrupt, and by *Findly* and *Lowrie* for the opposing creditors. The case of Leavitt was argued by *M'Candless* and *Black* for the bankrupt, and by *Lowrie* and *Baird* for the opposing creditors.

Irwin J. On the 23d of October, 1841, the bankrupts, Hanson S. Chadwick and Hart A. Leavitt, merchants of the city of Pittsburgh, made an assignment of all their estate, rights and credits, to assignees in trust for certain preferred creditors, and on the 19th and 25th of March following, they severally presented their petitions for the benefit of the bankrupt act, and were subsequently declared to be bankrupts. Their petitions for discharge are opposed on the ground that the assignment was voluntarily given of all their property, rights and credits, in contemplation of bankruptcy, and is, therefore, fraudulent and void. On the part of the bankrupts it is contended that the assignment is not embraced in the bankrupt act; that the words, "all *future* payments, securities," &c. found after the enacting clause of the second section, which it is supposed to infringe, mean all payments &c. subsequent to the time the act took effect, and that if the act does include the assignment, they are protected by the first and second provisions of the said second section.

The act was passed on the 19th of August 1841, and the 17th section declares "that this act shall take effect from and after the first day of February next." Until the time last mentioned, the act had no legal existence or power, except as to such parts of it, as, in express words, are retrospective, or which declare that certain provisions shall take effect from "and after the passage of the act."

The rights which it creates, its disabilities, and obligations, began on the 2d day of February, 1841, except where it otherwise provides in words, the import of which cannot be mistaken, as in the retrospective clause of the second section, which prevents the discharge of a bankrupt, who has made an assignment with preferences, subsequent

to the first of January, 1841, or at any other time, in contemplation of the passage of a bankrupt law, unless assented to by a majority in interest of the unpreferred creditors, and in that part of the 4th section, which declares that the bankrupt shall not be entitled to a discharge and certificate "who shall not have kept proper books of account, *after the passage of this act*, nor any person who, *after the passage of this act*, shall apply trust funds to his own use." These words are not found in any other part of the act, from which it may be inferred that, where Congress, in any other case, intended to give the act effect from its passage, the same language would have been used; yet, if equivalent words are used, and the context and scope of the act indicate the same purpose, they must receive the like construction. One leading and important object of the act, is, to place the creditors of a bankrupt, upon an equality in the distribution of his assets; and to effect this, in the first section, "any fraudulent conveyance, assignment," etc., is made an act of bankruptcy, and in the second section, all "payments, securities," etc., with preferences, in contemplation of bankruptcy, are declared to be a fraud upon the act.

The words "*any* fraudulent conveyance," &c., in the first section, embrace the fraudulent acts mentioned in the second section, and they are alike void, and a fraud upon the act, and subject to the same action in case of both voluntary and involuntary bankruptcy.

They are, with the other enumerated cases in the first section, acts of bankruptcy. It has become material to inquire, from what time they are so? No argument need be used to show that the "persons liable to become bankrupts within the true intent and meaning of the act," are only such as committed acts of bankruptcy from the time it took effect. This is too obvious to be denied. The great aim and object of the law is to declare what shall be acts of bankruptcy, and who are to be bankrupts; all the rest is but details of proceedings in bankruptcy, and these proceedings must necessarily begin to operate at the time when the subject matter of them can be reached. Unless therefore, an exception is made of a particular class of bankrupts, whose acts are void, from the passage of the law, there can be no decree of bankruptcy made which will have relation back to that time. It is contended that this exception is made by a fair construction of the second section of the act; that though it may be admitted that the first four classes of persons mentioned in the first section as liable to become bankrupts could only become so after the law took effect, yet that the fifth class such as make "any fraudulent conveyances, assignments," &c., from the natural meaning of the words "future payments," &c., in the second section, which only define the frauds referred to in the first section, must be deemed bankrupts from the passage of the act.

It must be admitted, that where a statute requires something to be done in *future*, or forbids that which was lawful before, to be done *in future*, and there should not be found in any other part of it, language

to restrict, qualify, enlarge, or show another meaning than the words naturally import, it takes effect from its passage, however inconvenient or injurious the consequences. The second section, unconnected with any other part of the act, would involve those who made "payments, conveyances, &c." in bankruptcy from the passage of the act, so that all such "payments, conveyances, &c." from that time would be fraudulent and void, and the person making them could not receive a discharge, while from the operation of the first and seventeenth sections all other acts of bankruptcy are created such at a future day, the act as to them not going into effect until more than six months from its passage. In the first section those liable to become bankrupts are ranged in classes, the fifth being such as "make any fraudulent conveyance, assignment, &c.," and but for the words "future payments, &c.," in the second section, this class as well as the first four could not be known as bankrupt before the day on which the act was to take effect. Can it be that the legislature intended to discriminate between them, so that one class should be the immediate subject of notice and punishment while the other classes are protected for more than six months longer? In the nature and in the degree of frauds they are all placed by the statute upon the same equal ground, but they were not so before the statute was passed, for the first four always bore a character of fraud, while the fifth, as defined by the second section, makes that fraudulent which was before sanctioned by general usage among merchants and by the laws of the state. It might be supposed therefore, that if it was designed to apply the law to one act of bankruptcy at one period, and to another at a later period, the longest notice was due to the persons whose assignments and transfers, by long usage and the statutes of several of the states — Pennsylvania among the number — were valid and sometimes meritorious, and who, if the bankrupt law took effect from its passage, could not in distant parts of the union, and after they had made *bona fide* transferances of property, know that they had subjected themselves to its provisions. It is a mistake to suppose that such assignments had any character of fraud.

In the case of *Brashear* v. *West*, (5 Peters's Reports, 614) Chief Justice Marshall says, "that a general assignment of all a man's property is, *per se*, fraudulent, has never been alleged in this country; the right to make it, results from the absolute ownership which every man claims over that which is his own, and where no bankrupt law exists for setting aside a deed honestly made for transferring the whole of a debtor's estate for the payment of his debts, the preference given to favored creditors, is the exercise of a power resulting from the ownership of property which the law has not yet restrained. It cannot be treated as a fraud." This doctrine had before repeatedly received the assent of the supreme court of this state. While such assignments were thus protected and were often considered as meritorious, a law that would suddenly change their character, and convert them into frauds, without promulgation, or, which is the same thing, without rea-

sonable notice, would be harsh and unjust, and it would be going too far to attribute such an intention to the legislature, unless expressed in language free from doubt, and which could not be rationally misconstrued. Probably no statute can be found, affecting rights so pervading and important, and subjecting them to changes so material, which is made to take effect from its passage. The bankrupt act of 1800 contained a provision against fraudulent conveyances of property similar to that found in the existing law; but the legislature guarded against any injustice in its operation. It passed on the 4th of April, but was not to take effect until from and after the first day of June following. A statute ought to receive such a construction, if the words and subject matter will admit of it, as that the existing rights of individuals shall not be infringed; and it is a general rule in construing them, that they are to be considered as prospective, and not to prejudice or affect transactions, unless such intention be manifestly expressed, especially if it tend to produce injustice or inconvenience. "Where rights are infringed, where fundamental principles are overthrown, where the general system of the laws is departed from, the legislative intention must be expressed with irresistible clearness to induce a court of justice to suppose a design to effect such objects." *United States* v. *Fisher*, (2 Cranch, 390.)

With regard to the first four acts of bankruptcy mentioned in the first section, no rights would be infringed, or no injustice done, if the law went into operation from its passage, for they are not protected by the usage or statute of any state; but the fifth act, so far as it relates to assignments which were not frauds *per se* was not repugnant to the law and usage of the state, and if the law intended to discriminate between them, as to the time of its operation upon each, the fifth would have been the last to go into effect. But it is manifest that these several acts of bankruptcy were intended to go into effect at the same time, and that that time was from and after the first day of February 1842.

The fifth class includes, if not in precise words, every kind of transfer, security, gift, &c. mentioned in the first clause of the second section, and the latter part of the clause declares that "the assignee under the bankruptcy shall be entitled to claim, sue for, recover and receive the same as a part of the assets of the bankruptcy." The third section vests all the property and rights of property of the bankrupt, from the time of the decree, in his assignee, for the benefit of his creditors. Now, it is clear, that the right of the assignee to the bankrupt's property, created by the decree, in involuntary cases, cannot go farther back than the act of bankruptcy, and that that act could not be committed before the law went into operation. There is nothing in the law which designs to reach the property of the bankrupt before an act of bankruptcy; in that respect it pursues the policy of all bankrupt laws as well as the plain dictates of justice; the assignments spoken of in the second clause of the second section, made subsequent

to the first of January, 1841, or at any other time, create no exception, as they are not void, but merely prevent a discharge, unless assented to by a majority in interest of the creditors not preferred.

In giving a construction then, to the words "*future* payments," &c. in the second section, every part of the act is to be considered and the intention of the legislature to be extracted from the whole; and where great inconvenience will result from a particular construction, that construction is to be avoided, unless the meaning of the legislature is plain, in which case it must be obeyed. Now, it is acts of bankruptcy which the law only intends to reach; there can be no frauds upon the law but the acts themselves *eo nomine*, and as such acts can only happen by force of the statute, which, as has been shown, took effect, except such parts thereof as have been before noticed, from the second day of February, the "future payments, securities, &c." mentioned in the second section must be such as were made and given *future to that day*; otherwise we should involve ourselves in the anomaly of decreeing, in involuntary cases, certain matters to be frauds upon the law, which were not by any of its provisions acts of bankruptcy. If the words "future payments, &c." should be construed to mean future to the passage of the act, in most cases the enactment would defeat itself; the debtor being then in failing circumstances, and intending to apply for the benefit of the act, would be deterred from giving preference by assignment, and his property might all be exposed to the creditor or creditors who should be most vigilant in obtaining judgments and executions. The other creditors, meanwhile, between the passage and operation of the act, could make no movement under it, and after its operation, if the judgments and executions were not by the procurement of the debtor, they would be without remedy.

Where the law was intended to have effect from its passage, it employs language not to be mistaken, as in the parts quoted "from and after the passage of the act, &c."

If it has been shown that there could be no act of involuntary bankruptcy until after the law took effect, the reasoning which leads to that conclusion, applies with as much force to cases of voluntary bankruptcy. The right of the creditors to the property of either bankrupt is secured by the law from the same time, and with the single exception in the last clause of the second section, which is retrospective in its effects, they are both equally subject to its provisions. There can be no reason given why the matter in dispute should apply to the one and not to the other, and none has been attempted.

Looking into every part of the act, its object and its consequences, the intention of the legislature in using the words "all future payments," &c. cannot be doubted: they must be construed to mean all payments, securities, &c. which were made and given after the act took effect. The assignment of the petitioners is therefore not embraced by the bankrupt law, and they are entitled to their discharge. Decree accordingly.

Circuit Court of the United States, Connecticut, September, 1842, at Hartford. In Bankruptcy.

IN THE MATTER OF ELI HORTON.

The bankrupt law did not go into operation until the first day of February, 1842; it can have no influence upon, or control over, any party or transaction before that day. [See *Hutchins* v. *Taylor*, ante, 289, and the *Matter of Chadwick*, ante, 457

Held, that an assignment, made in Connecticut, before the first day of February, 1842, under the State insolvent law of 1828, constitutes a lien upon the property in the hands of the trustee under the assignment.

BEFORE the district court of Connecticut, at a recent term, Abner Hendee, the county assignee in bankruptcy, filed his petition against Lorin P. Waldo, setting forth, that the latter was in the possession of a large sum of money and goods belonging to Eli Horton, at the time his petition was filed in the district court of the United States; and that the same were assets of the said Horton, praying that the same be restored to the county assignee for the benefit of the general creditors of said Horton. Notice was served on the parties interested, and Lorin P. Waldo, Esq., came into the district court and made answer to the application, substantially as follows: That in December, 1841, Horton made an assignment, under the insolvent law of Connecticut, passed in the year 1828, for the benefit of all his creditors, that the said Waldo was the trustee under said assignment, which had been duly returned to the probate court in the district of Stafford, where proceedings were immediately commenced and were then in progress, under the state law above mentioned, and that on the 1st day of February, 1842, when the bankrupt law went into operation, he was managing said trust according to the provisions of the act of the general assembly of the State of Connecticut, and now claims the right to administer thereupon, according to the provisions of said act of 1828, denying the right of the county assignee in bankruptcy, to take said goods and moneys out of his hands, for that the said petition of Eli Horton was not filed in the district court until the 15th day of March, 1842. These facts having been agreed to, the question arising on the same was adjourned unto the circuit court of the United States to be held at Hartford in the second circuit, on the 17th of September, 1842.

The opinion of the court was given by the district judge, Thompson J. concurring therein.

JUDSON J. The facts in this case present the question, how far proceedings under the state insolvent law of Connecticut are valid, since the enactment of the bankrupt law of August 19th, 1841. In order to determine this question, it is necessary to recur to the last proviso to the second section of the act of congress, which reads as follows: "And provided also, that nothing in this act contained shall be construed to annul, destroy, or impair any lawful rights of married

women or minors, or any *liens*, mortgages, or other securities on property, real or personal, which may be valid by the laws of the states respectively, and which are not inconsistent with the second and fifth sections of this act." Was the assignment made by Horton to Waldo as trustee in December, 1841. and the proceedings upon that assignment in the probate court a *lien* on this property, such as the bankrupt act does not annul? We think it was.

The bankrupt law did not go into operation until the 1st day of February, 1842, and must be considered the same as if it had been enacted on that day. The seventeenth section provides, that the act shall take *effect* from and after the 1st day of February. By this we are to understand that the act is to have *no effect* until that day. It is therefore to have no influence upon or control over any party or transaction up to that day. The words *no effect* are significant, and cannot be construed to reach any proceeding anterior to the 1st day of February. The assignment in question was made in December, 1841, and being then valid by the laws of Connecticut, must be held valid *now*. The consequence is, that all assignments under the state insolvent law, commenced before the 1st day of February, 1842, constitute a *lien* within the terms of the last proviso to the second section of the act, but that all assignments under the state insolvent law, commenced after the 1st day of February, 1842, are inconsistent with the second and fifth sections of the bankrupt act, and are rendered void by proceedings in bankruptcy.

The assignee in bankruptcy cannot claim this property, but it must be left in the hands of the trustee under the state law.

Municipal Court of the City of Boston, December Term, 1842, at Boston.

COMMONWEALTH *v.* JAMES HENRY.

The rights and duties of commanding officers respecting the necessary bounds and limits to their parade.

THIS was the case of an indictment for an assault and battery on Asel Stanley. It appeared that the defendant was a member of the National Lancers, a company of horse, and on the occasion when the assault was alleged to have been committed, the said company had been ordered by the commanding officer to clear the field of parade, the limits of which were designated by flags. There was a disposition on the part of some of the spectators to resist, and the defendant came into collision with Stanley, who seized the defendant's horse by the bridle, when the latter struck Stanley with the flat of his sword.

Park and *Bigelow*, for the defendant, placed the defence on three grounds; (1.) That the field of parade was private property, hired and paid for by the commanding officer, and the defendant had a right to eject the prosecutor as a trespasser; (2.) That the prosecutor seized the defendant's horse before he was struck, and the defendant had a personal right to beat him off; (3.) That by the Revised Statutes, ch. 12, § 80, the defendant not only had a right to expel the prosecutor from the ground, but to prosecute him afterwards.

S. D. Parker for the Commonwealth.

Thacher J. instructed the jury, that in cases of parade, the law expressly authorizes the commanding officer to ascertain and fix necessary bounds and limits to his parade, within which no spectator has a right to enter without his leave. In case any person shall intrude within the limits, after being once forbidden, he may be confined under guard during the time of parade, or a shorter time, at the discretion of the commanding officer; and any person who shall resist any sentry who attempts to put him out of the limits, may be arrested by order of the commanding officer, and carried before a court or magistrate, for examination and trial. Rev. Stat., chap 12, sec. 80.

The law thus declares, that for a person to intrude on the parade ground, and to refuse to leave it when required, is an offence; and consequently it authorizes the appointment of sentries to clear the ground and to exclude intruders. In the performance of this duty *bona fide* and without oppression, the sentry may claim the protection and support of the law. And if the defendant, did no more than this, and used no more force than naturally and necessarily grew out of the performance of this duty upon the occasion, he committed no offence, and is entitled to a discharge. If, however, availing himself of his military position, he unjustly, and without cause, assaulted Mr. Stanley, and treated him with violence and indignity, he must be found guilty — because we must be firm for the rights of the citizen, while we yield respect and protection to the rightful powers of the soldier.

The judge then proceeded to review the evidence, and remarked that Stanley, in the most material points of his testimony, had been contradicted by several witnesses. If the jury believed that Stanley seized Henry's bridle, the next question was whether Henry did any more than he was compelled to do to clear his horse, and preserve his lawful position in the field? To deprive a cavalry soldier of the use of his horse, was to disarm him for the very service which he was appointed to perform. Upon the point of trespass, his Honor was of opinion, that it made no difference whether the field was a public or private one: — the flags were a notice to all spectators, that when the proper time came they must quit the ground. Stanley could not expect the Lancers to know he was lame. He could not expect them to stop and ask him how he did. Whether lame or not, if he had walked away ever so slowly, there would have been none of this difficulty.

If all the witnesses but himself stated the transaction truly, Stanley was not struck because he did not leave the field, or because he moved slowly, but because he seized Henry's bridle, and continued to hold on to it till struck. The jury would judge whether the blow on the arm he received was unnecessary, and if after the first blow he again seized the bridle with his other hand, the jury would also consider whether Henry was not excusable for hitting him a second time with the flat of his sword. In judging of this point, they would bear in mind that to seize the bridle of a horse is a dangerous thing, for if the horse be spirited the rider's very life is placed in great peril. If, then, Henry's object was merely to disengage Stanley's hold, it was no violation of law. If Stanley chose to stay under the horse's feet it was his own fault — he could walk away, and after he was struck he did walk away.

Parker requested the judge to charge the jury that it might have been Henry's duty to have arrested Stanley, and not have struck him.

THACHER J. — I cannot charge the jury so. The exigency of the moment might have justified a blow, while at the same time the defendant might not have thought it worth while to follow the matter up by arresting and prosecuting Stanley.

The jury returned a verdict of "not guilty."

Supreme Judicial Court, Massachusetts, September Term, 1842, at Lenox.

CALHOUN *v.* CURTIS.

Tenants in common — Partition — Growing crops.

Several persons were tenants in common of a farm of upland, as heirs at law. While this was held in common, the defendant, who was one of them, sowed a part of the land with rye, without permission or objection of his cotenants. While the grain was growing, partition was made of the land under a warrant from the probate court, which partition was accepted by said court. Part of the land thus sown was assigned to the defendant, and a part to two other cotenants, from whom the plaintiff derived title. The defendant claimed the whole crop, he having sowed it.

SHAW C. J., delivered the opinion of the court, to the effect, that by a conveyance of land, a growing crop passes. The effect of a partition is the same, and consequently the defendant could hold only so much of the crop as was growing on the land assigned to him in severalty.

DIGEST OF AMERICAN CASES.

Selections from 2 Metcalf's Reports.

ACCORD AND SATISFACTION.

If a debtor gives, and the creditor receives, in full satisfaction of the debt, the note of a third person for a smaller sum than the amount of the debt, it is a good accord and satisfaction to bar a suit by the creditor to recover the balance of the debt. So if the creditor receives a less sum than is his due, in satisfaction of the whole, before the day of payment. *Brooks* v. *White*, 283.

ACTION.

The maker of a note made payable on time is not liable to an action thereon before the time has elapsed, although he, before that time, unfairly obtains possession thereof, and refuses to return it to the payee. *Ilsley* v. *Jewett*, 168.

2. A father, who lives apart from his wife, and suffers his son, who is a minor, to remain under the custody and care of the wife, to be supported and employed by her — or allows such son to go from him and employ himself as he pleases, and take his wages — cannot maintain an action against a third person, on a declaration averring that the defendant enticed and carried away the son from the plaintiff's own care and custody. And where a minor, thus left to the care of his mother, or thus allowed to employ himself, ships for a voyage to sea, at the request of the mother, the father cannot, by forbidding the ship-owner to take the son to sea, entitle himself to maintain an action against the ship-owner, on such declaration. *Wodell* v. *Coggeshall*, 89.

3. A party who accepts an order to pay a certain sum out of the first money received from a newspaper establishment, is bound to pay from time to time, on request, as he receives the money; and is liable to successive actions, if he refuse, after request, to pay accordingly. *Perry* v. *Harrington*, 368.

4. The general owner of real estate is not answerable for acts of carelessness, negligence and mismanagement committed upon or near his premises, to the injury of others, if the conduct of the business, which causes the injury, is not on his account, nor at his expense, nor under his orders or efficient control. *Earle* v. *Hall*, 353.

5. Where A agreed to convey land to B, and B agreed to build a house thereon and pay for the land, and while the agreement was in force, B in preparing to build the house on his own sole account, by workmen employed by himself alone, undermined the wall of the adjoining house of C whereby it was injured; it was held that A was not answerable for this injury, although the title to the said land remained in him at the time when the injury was committed. *Ib.*

ASSIGNMENT.

Where a debtor assigned his property in trust for such of his creditors as should execute the indenture of assignment, which contained a release of the debtor, within sixty days, it was held that a creditor who executed it after the sixty days had elapsed, was not a party thereto, and that he did not thereby release the debtor, although he had made a parol agreement, within the sixty days, that he would execute the indenture. *Battles* v. *Fobes*, 93.

2. In an assignment of property in

trust for the payment of creditors, whose names and the amount of whose claims were inserted in a schedule, it was provided that corrections might be made in the schedule, and such items and amounts be afterwards inserted therein as should conform to the actual state of facts: the claim of K. who first executed the assignment, was inserted in the schedule, as "about four thousand five hundred dollars:" after other creditors had executed the assignment, K. made and proved claims against the assignor to the amount of five thousand eight hundred and sixty-seven dollars. *Held*, that as against the other creditors, K. was entitled to a dividend on the latter sum. *Dedham Bank* v. *Richards*, 105.

3. Where an assignment is made for the benefit of such creditors only as shall become parties thereto within a specified time, no creditor can have the benefit thereof, who does not become a party within that time. *Ib.*

4. A letter of attorney to receive all the money due from A. to the constituent, and to give a discharge therefor in the constituent's name, with a clause stating that this is "an assignment of the same," constitutes an assignment of the debt to the attorney, though the letter is not in terms irrevocable, and does not expressly authorize the attorney to receive the money to his own use. *Weed* v. *Jewett*, 608.

ASSUMPSIT.

Where, after a partnership is dissolved, a suit for a partnership debt is brought against the former partners, and one of them is held to bail, and judgment is recovered against both, and the bail are compelled to pay the amount of such judgment, they cannot recover of the other partner any part of the sum thus paid by them. *Bowman* v. *Blodgett*, 308.

2. A surety, who pays the debt of the principal by giving his own promissory note therefor, may maintain an action against him for money paid. *Doolittle* v. *Dwight*, 561.

ATTACHMENT.

When personal property, owned by two tenants in common, is attached in a suit against one of them, the officer is entitled to the possession and control of the whole, though he can sell only an undivided moiety thereof on execution; and if, pending the attachment, the other cotenant makes a division of the property, and takes one half of it to himself, he is liable to the officer, in an action of trover, though the officer has sold the remaining half on execution and applied the proceeds towards satisfaction thereof. *Reed* v. *Howard*, 36.

2. A second attachment of all a debtor's right, title and interest in land, is an attachment of his right of redeeming it from the first attaching creditor to whom it may afterwards be set off on execution, and is an incumbrance on the land from the time it is made. *Norton* v. *Babcock*, 510.

BANK DIRECTORS.

The board of directors of a bank is a body recognised by law, and, to all purposes of dealing with others, constitutes the corporation. *Burrill* v. *Nahant Bank*, 163.

2. A board of bank directors may delegate authority to a committee of its members to alienate or mortgage real estate; and such authority to convey real estate necessarily implies authority to execute proper instruments for that purpose, and to affix the corporate seal thereto. *Ib.*

3. Where a board of bank directors authorize a committee of its members "to sell and transfer any estate owned by the bank," and the committee gave a mortgage of the real estate of the bank to a creditor who had recovered judgment against the bank on its bills, and took from him, at the same time, a bond conditioned that he would not put those bills in circulation, and the board of directors accepted said bond and acted on it, and the cashier paid the costs of the suit in which said judgment was recovered, according to the agreement made between said creditor and said committee; it was held, that whether the committee had or had not authority to *mortgage* the estate, the mortgage had been ratified by the board of directors. *Ib.*

BILL OF EXCHANGE.

It is no defence to an action by a *bona fide* holder of a bill of exchange against the acceptor, that the bill was fraudulently altered before acceptance. *Ward* v. *Allen*, 53.

2. A bill of exchange, payable in

three days, was indorsed by the payee for the accommodation of the drawer, who altered it to thirty days and put it into circulation: on discovering the alteration, the holder, and the payee who had indorsed it, made an arrangement with the drawer, by which the payee gave security to the holder for half the amount of the bill, and the drawer gave security to the holder for the balance, and the bill was returned to the payee: the payee thereupon presented the bill to the drawee, without disclosing to him the alteration or the said arrangement with the drawer, and read it to him as it was altered, and the drawee said it was correct and should be paid. *Held*, that the drawee was bound by his acceptance. *Ib.*

BOND OF INDEMNITY.

A sold a pew to B, and the parish conveyed it to B with warranty, having a bond from A to save the parish harmless, "if any person or persons should establish their title to said pew against the said obligor or his assigns." C claimed the pew, and he and B without notice to A submitted the question of title to arbitrators, who determined that the pew belonged to C and that B should make to C a deed conveying all his (B's) right in the same; and judgment was rendered on this award. C called upon the parish for indemnity under their covenant of warranty, and the parish indemnified him without suit, and thereupon commenced an action against A on this bond. *Held*, that the title of C to the pew was not *established*, within the meaning of the bond, and that A might show in defence, that the title was not in C. *Proprietors of Church in Brattle Street* v. *Bullard*, 363.

BOUNDARIES.

A boundary mentioned in a deed may be rejected, when it is manifest from all the circumstances of the case that it was inadvertently inserted, and that a tract of land with different boundaries was bargained for and intended to be conveyed. *Thatcher* v. *Howland*, 41.

2. D. conveyed to E. "all his real property or homestead, together with about thirty acres of land, more or less, with all the orchards, privileges, &c. for more particular boundaries, reference being had to a deed given by R. to said D.": D. had previously conveyed to L. one half of the land conveyed to D. by R.; but L. had at the same time conveyed to D. other land adjoining to that which R. had conveyed to D.: D. was not, when he conveyed to E., seized of the fifteen acres of the land which would be included by a reference to the boundaries mentioned in R.'s deed to him; and unless the deed from D. to E. included the land conveyed to D. by L., E. would have title under it only to fifteen acres in the whole, though he paid a full consideration for thirty acres. *Held*, that the reference, in the deed from D. to E., to the boundaries described in R.'s deed to D. was inadvertent, and should be rejected, and that the land conveyed to D. by L. passed by D.'s deed to E. *Held* also, that D.'s widow, by her deed conveying to the heirs of E. all her right and title to the estate conveyed by D. in his deed to E., barred herself of dower in the land conveyed to D. by L. *Ib.*

3. Under a license to sell all the real estate of an intestate, his administratrix sold, and by deed conveyed, "the residue of the deceased's dwelling-house that was not set off to his widow as dower in said estate; reference always being had to the returns and bounds of the widow's thirds for a particular description of the bounds of the premises." *Held*, that the reversion of the estate assigned to the widow as dower did not pass by said deed. *Kempton* v. *Swift*, 70.

COMMON LAW.

Under the provision in the constitution of Massachusetts, c. vi. § 6, that all laws theretofore adopted, used and approved, in the colony, province or state, and usually practised on in the courts of law, should remain and be in full force, until altered or repealed by the legislature, it is not necessary, in order to prove that a principle or rule of the common law had been adopted, &c. to show that such principle or rule had been adjudicated before that constitution went into operation: the court rely on usage and tradition, and the well known repositories of legal learning — works of approved authority — to learn what are the rules of the common law; and it is to these sources,

that the above provision in the constitution refers. *Commonwealth* v. *Churchill*, 118.

CONDITION.

Where real estate is conveyed on a condition that the grantee shall discharge a mortgage previously made thereon by the grantor, and no time is mentioned or understood by the parties, at which the condition is to be performed, it must be performed in a reasonable time. *Ross* v. *Tremain*, 495.

CONTRACT.

To render a promise void on the ground that the consideration thereof was the stifling of a criminal prosecution, it is necessary that the promise should be made for gain, and not merely from motives of kindness and compassion. *Ward* v. *Allen*, 53.

2. The payee of a note released the maker upon the maker's assigning his property in trust for payment of his debts: The parties to the assignment afterwards agreed, by a sealed instrument, that the creditors should be paid fifty per cent. on their claims, in eighteen months; that the debtor should not be sued or molested within that time; and that if fifty per cent. should not be paid as aforesaid, the whole amount of the creditor's claims should be paid in full, "the release contained in said assignment to the contrary notwithstanding." *Held*, that said note was emerged in the latter agreement, and that the payee might maintain an action thereon against the maker, on his failing to pay fifty per cent. within the stipulated time. *Whitney* v. *Whitaker*, 268.

COVENANT.

A, who had made the first attachment of land, caused it to be set off on execution, and then conveyed it to B by deed, with a covenant that it was free of all incumbrances: C, who had made a second attachment of the same land, afterwards caused the debtor's right of redeeming it from A to be sold on execution, and the purchaser took a deed thereof from the sheriff. *Held*, that such second attachment constituted an incumbrance, and that A was liable to B on said covenant. *Norton* v. *Babcock*, 510.

2. Where an incumbrance on land is a right of redemption, or other paramount title, which exposes the grantee to a loss of his whole estate by eviction, the sum which he fairly pays to extinguish such incumbrance, is the measure of damages in an action against his grantor on the covenant against incumbrances, unless that sum exceeds the whole value of the estate. But if the grantee in such case pays more than the value of the estate, in order to extinguish an incumbrance thereon, his measure of damages is that value only. *Ib.*

3. A and B covenanted with each other, that as soon as certain arbitrators should appraise B's land and report their appraisement, A would pay to B the sum at which the land should be thus appraised, and B would accept said sum and convey the land to A by deed of warranty: the arbitrators made and reported their appraisement, and B immediately declared, in their hearing and in the hearing of A, that he would "never let the land go for that price." *Held*, that notwithstanding this declaration of B, A could not maintain an action against him on his covenant, without first tendering the appraised value of the land, and demanding a conveyance thereof. *Pomroy* v. *Gold*, 500.

4. A conveyed a mill to B and covenanted with him, his heirs and assigns, to keep one half of the mill-dam in repair. The dam was afterwards carried away by a flood, and B, after having duly requested A to aid him in rebuilding it, conveyed the mill with the privileges, &c. to C who at the same time agreed in writing that B should "have all that should be obtained of A for non-fulfilment of his contract, provided A should not assist B in erecting the dam, and B should be compelled to rebuild it without A's assistance." A afterwards refused to assist in repairing the dam, and B repaired it at his own expense. *Held*, that B might maintain an action in his own name against A for breach of the covenant to keep the dam in repair. *Held* also that B could not recover damages for loss of the profits of the mill, by reason of the delay caused by A's refusal to aid in repairing the dam; but that he could recover only one half of the expense which he had incurred in repairing it. *Thompson* v. *Shattuck*, 615.

DECEIT.

Where a defendant sets up the plaintiff's release of the demand in suit, and the plaintiff seeks to avoid the release on the ground that he was induced to make it by the misrepresentations of the defendant concerning his assets, &c. the burden of proof is on the plaintiff, and he must show that such misrepresentations were intentional. Undesigned misrepresentations, in such case, will not render the release void. *Page* v. *Bent*, 371.

DEED.

Where land is conveyed by deed poll, with a reservation or provision that the grantee shall perform a certain service for the benefit of the grantor, and the grantee accepts the deed, he is bound to perform the service. *Newell* v. *Hill*, 180.

2. The owner of two adjoining messuages, fronting on a street, conveyed one of them by a deed, in which, after stating that there was, on the south side of the messuage conveyed, a gate or passage way of about five feet wide, leading from the street into the yard thereof, reserved to himself, his heirs and assigns, free liberty of ingress, egress, &c. through and upon said gate or passage way, for carrying and recarrying wood, &c. through the same, and over the yard of the granted messuage into and from his own adjoining house and land. *Held*, that the width of the passage way was not definitely fixed by the deed, and that the reservation was of a right of a suitable and convenient passage for the purposes indicated. *Held* also, that although the grantor, and those claiming under him, had used the passage way long enough to gain a prescriptive title thereto, yet as it had been used in near conformity to the terms of the reservation, it must be deemed to have been enjoyed under the reservation, and not adversely thereto, and must be limited by the terms thereof. *Atkins* v. *Boardman*, 457.

3. Where the owner of two adjoining messuages conveys one of them, and it is agreed by him and his grantee, that if the latter shall make "any addition of building" westwardly, he shall not extend it northwardly beyond a certain line, the grantee is not thereby restricted from raising his building higher, though by so doing he interrupts the access of light and air to the windows of the grantor's house. *Ib.*

4. Where the owner of two adjoining messuages and lots of land, one of which he occupies and the other of which he leases, constructs a drain, from the messuage which he leases, through the land which he occupies, into a common sewer, and permits his tenants to use it for ten years and more, and then sells both messuages and lots, on the same day, to different purchasers, and in his deed to the purchaser of the messuage and lot which he formerly leased, does not mention the drain; such purchaser acquires no right, by the deed, to the use of the drain through the other lot of land, if he, by reasonable labor and expense, can make a drain without going through that land. *Johnson* v. *Jordan*, 234.

5. A. made a deed of land to B. and B. at the same time gave back a mortgage to A. Before the deed or mortgage was recorded, B. conveyed the land to C. who had knowledge of the mortgage. After the deed to B. and his mortgage to A. were recorded, C. mortgaged the land to D. and D. assigned the mortgage to E.: Neither D. nor E. had any notice of the mortgage to A. besides that which was implied from its being on record. *Held*, that E. could not hold the land against A. *Flynt* v. *Arnold*, 619.

DISSEIZIN, DISSEIZOR, ETC.

In the year 1796, A. owned one fourth part of a corn-mill and its appurtenances, and conveyed one eighth of said mill, &c. to B., and about the same time agreed to sell his other eighth part thereof to C. to whom he never gave a deed, but who paid for the same, took possession thereof, received a share of the tolls, and afterwards conveyed the same one eighth part to D. D. and his assigns continued in quiet possession until the year 1837. No acts of A., after 1796, tended to show his possession of said mill, &c. except his going upon the site thereof, in 1820 or 1821, after the mill was burned, and when those who claimed the property therein were also there, and forbidding them to rebuild the mill; and his going, about seven years afterwards, into the mill which was rebuilt, and declaring

to the person who had charge of it, that he owned one eighth part of the mill privilege. *Held*, that the possession of C. and his assigns was adverse to A. and that A.'s heirs could not maintain a writ of right, commenced in 1837, on his seisin within forty years. *Barker* v. *Salmon*, 32.

2. Where two or more persons disseize another of lands, they are joint tenants; and, therefore, though one of them die seized, after continuing in peaceable possession for five years, no descent is cast, and the lawful owner's right of entry is not thereby tolled. *Putney* v. *Dresser*, 583.

EMBEZZLEMENT.

An auctioneer, who receives money on the sale of his employer's goods, and does not pay it over, but misapplies it, is not such an agent or servant as is intended by the Rev. Sts. c. 126, § 29; whether he receives the goods for sale, in the usual mode, or receives them on an agreement to pay a certain sum therefor, within a specified time after the sale. The money received by an auctioneer, for goods sold by him, in both these cases, is his own, and not "the money of another," *Commonwealth* v. *Stearns*, 343.

ESTOPPEL.

If the doctrine, that a party, who has a title to property, and stands by and encourages and promotes a sale thereof to a third person, thereby waives his title, or is estopped to maintain it, can be applied at all, by a court of law, to real estate, it can be so applied only where such party conceals an outstanding title. *Parker* v. *Barker*, 423.

EVIDENCE.

It is not necessary, on the trial of an indictment of an unmarried man for adultery with a married women, under Rev. Sts. c. 130, § 1, to prove that he knew, when he committed the offence, that she was a married woman. *Commonwealth* v. *Elwell*, 190.

2. Where a committee of the proprietors of a township lay out, by metes and bounds, a lot to B., on the original right of A., and such laying out is recorded in the proprietors' books, and no adverse claim to the lot is made for nearly thirty years; this is *primâ facie* evidence that the laying out was right and regular, although there is no other evidence that A. was one of said proprietors, and although his name is not in the list of proprietors which is found in their books. *Spurr* v. *Bartholomew*, 479.

3. Though a grantee enters upon more land than is included in his deed, yet if the grantor afterwards indorses on the deed a recital that it was intended to convey all the land upon which the grantee has entered, and covenants to warrant the whole to the grantee, his heirs and assigns; this is evidence that the grantee had a right to enter upon all the land, and will authorize him and his heirs to defend their possession under the grantor's title. *Ib.*

4. Evidence of adverse possession for twenty years or more warrants a presumption that the possessor had a deed of the property possessed, and that all acts, necessary to give the deed effect, were duly done. *Proprietors of Church in Brattle Square* v. *Bullard*, 363.

5. In a suit against underwriters, to recover for a loss of bank bills, on a policy covering a certain amount of "property" on board a vessel, the judge, who tried the case, instructed the jury, that in the absence of fraud, the amount insured had some slight tendency to prove the amount of bills on board: *Held*, that this, being only a remark upon the state of the evidence, was not a ground of exception. *Whiton* v. *Old Colony Ins. Co.*, 1.

6. A witness, who had been for ten years secretary of an insurance company, and as such had been in the practice of examining buildings, with reference to insurance thereof, and who had also, as county commissioner, frequently estimated damages caused to estates by the laying out of highways and railroads, was held to have been rightly permitted, on a hearing before a jury empannelled to appraise damages sustained by a party by the laying out of a railroad over his land and near to his buildings, to give his opinion that the passage of locomotive engines, within one hundred feet of a building, would diminish the rent and increase the rate of insurance thereof against fire: *held* also, that he was rightly permitted to testify that the directors of the insurance company, of which he was secretary, upon his consulting them as

to an application for insurance on a building in the vicinity of the buildings of the party then before the jury, had declined to take the risk at any rate. *Webber* v. *Eastern Rail Road Co.*, 147.

7. In an action by the assignee of the reversion against a tenant in dower for waste committed by her assignee, actual possession by her assignee is sufficient evidence of the assignment to him, although the deed of assignment is not recorded until after the action is commenced. *Foot* v. *Dickinson*, 611.

8. In the trial of a question of title, where the defendant relies on long possession, he may give in evidence, in order to prove that the possession was adverse and under claim of title, the declarations of the party, through whom alone the plaintiff claims or can establish his claim, that such party had sold the property in question to the person who was in possession, and under whom the defendant claims. *Proprietors of Church in Brattle Square* v. *Hubbard*, 363.

9. Parol evidence of the conversation of the parties, at the time when a note is given in part payment, is admissible to show for what debt it was given. *Ilsley* v. *Jewett*, 168.

10. Parol evidence is admissible to explain a receipt, and show to what demands it is applicable. *Brooks* v. *White*, 283.

11. Where a receipt, given to one of two partners, was lost, and parol evidence was introduced to prove the terms thereof, it was held, that it was for the jury to determine whether the receipt was intended to discharge such partner only, or to discharge the other partner also. *Ib.*

12. In an action of slander, the defendant cannot give evidence, in mitigation of damages, that the plaintiff has been hostile to him for a long time, and has proclaimed, that he did not wish to live in peace and on good terms with him. *Andrews* v. *Bartholomew*, 509.

13. If a subscribing witness to a bond be interested at the time of attestation and dead at the time of the trial, evidence of his handwriting is not admissible to prove the execution of the bond. *Amherst Bank* v. *Root*, 522.

EXECUTION.

An execution, that is made returnable into the office of the clerk of the court of common pleas in three months after its date, is returnable at any reasonable and convenient time on the return day; and evidence of the usual hours during which the clerk's office is open for business is *primâ facie* evidence of what is such reasonable and convenient time. *Bull* v. *Clarke*, 587.

2. A return of *non est inventus*, fairly made on such execution, at any reasonable and convenient time during the return day, will charge bail for the avoidance of their principal. *Ib.*

EXECUTOR AND ADMINISTRATOR.

A judgment recovered in Massachusetts — no defence having been made — by an administrator appointed in another state, on a demand due to the intestate from a citizen of Massachusetts, is no bar to a suit on the same demand by an administrator of the same intestate duly appointed in the latter state, although execution on the first judgment was levied on the debtor's real estate, and returned satisfied. *Pond* v. *Makepeace*, 114.

FENCE.

An occupant of land, who is bound to maintain a fence between his own and an adjoining enclosure, may place half of a fence, of reasonable dimensions, on the land of the adjoining owner. And he may cut half of a ditch on the land of such owner, when a ditch is proper for a partition fence. *Newell* v. *Hill*, 180.

FRAUDS, STATUTE OF.

An oral promise, made by a mortgagee to the mortgagor's creditors, to relinquish his claim to the land mortgaged, if they will accept from the mortgagor another mortgage thereof, and give him time of payment, is inoperative and void by the statute of frauds; and though such creditors, on the faith of such promise, take a second mortgage, and give time of payment to the mortgagor, they acquire no right thereby, as against the first mortgagee. *Parker* v. *Barker*, 423.

INTELLIGENCE AND MISCELLANY.

In Bankruptcy. A correspondent has sent us, for insertion in this work, the following note of a decision, made by the superior court and affirmed by the court of errors in Connecticut, under the 63d section of the bankrupt act of 1800, which is in these words: "Nothing contained in this act shall be taken, or construed, to invalidate or impair any lien, existing at the date of this act, upon the lands or chattels of any person who may have become bankrupt."

"An attachment, under the attachment laws of this state, creates a lien upon the property attached, within the meaning of the 63d section of the bankrupt act of 1800; and where a suit is commenced by attaching the property of the defendant, and the defendant afterwards commits an act of bankruptcy, and regularly obtains a certificate, and pleads the same in bar of said suit, judgment will be rendered against the defendant, but execution will issue against the property attached only." (*Ingraham* v. *Phillips*, 1 Day's Rep. 117.)

Our correspondent, in all probability, was not aware that this very decision was reviewed in a former number of this Magazine (Law Reporter, Vol. 4. p. 462,) where the following sentence occurs. "Upon a careful consideration of that case, taking it in connection with the constitution of that court, composed of the governor, lieutenant governor, assistants, &c., and as it stands thus naked, without reasons or explanation, it does not seem to deserve great weight as an authority."

Taxation in Massachusetts. Our attention has been called to an erroneous statement in the article on this subject, in our last number, on page 386, *note*. The resolves of the house of representatives are there alluded to, and it is stated that they were passed in the senate — yeas 28, nays 4. The truth is, that these resolves were never passed in the senate at all. After their passage in the house, they were sent to the senate, referred to the appropriate committee, who reported (March 3) that they *ought not to pass* and the report was accepted. But certain other resolves on this subject were reported in the senate on February 17, by a special committee, to whom had been referred so much of the governor's address as related to the maintenance of the public faith, through their chairman, Hon. William J. Hubbard, of Suffolk. These resolves were to the purpose — dignified in their tone, and in good taste. On March 2d, they were passed — yeas 28, nays 4, and were sent to the house of representatives, where they were referred to a special committee, by whom they were reported to the house without amendment on the last day but one of the session; they were then laid on the table, and owing to the press of other business, were not again called up. Thus, it appears that neither set of resolves were adopted by both branches of the legislature.

CRITICAL NOTICES.

REPORTS OF CASES DETERMINED IN THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE. By John Appleton. Volume I. Maine Reports, Volume XIX. Hallowell: Glazier, Masters & Smith. 1842.

ON the publication of the fourth volume of Shepley's (Maine) Reports, more than a year ago, we remarked, that the reporter would probably publish but one more volume, the party of which he was a member having been defeated; and we expressed a regret, that such an office should be held by the precarious tenure of party success. When the whigs came into power, John Appleton, Esquire, of Bangor, was appointed reporter, but he had scarcely completed a circuit and obtained materials for the present volume, when the party to which he owed his appointment lost its ascendency, and Mr. Shepley is again the reporter.

The volume before us is creditable to Mr. Appleton, and will well compare with the productions of most of the reporters of the present day. The facts are stated lucidly and with sufficient fulness, and a proper medium is preserved in stating the arguments. The marginal abstracts are correct, concise, and, what is not the case in all reports, they convey a clear idea of the author's meaning. We have heard it remarked as their greatest defect, that they often give the general principle on which the case was decided, rather than what was actually decided, while in truth, it is so much oftener the *application*, than the *existence* of principles of law, which is in dispute, that the abstract of a case, stating only the principle, is generally of little use except to direct the eye to the case itself. We are not disposed to pay much regard to this supposed defect, however, as we do not happen to be of those, who think it the reporter's duty in every instance, to re-state the whole case in the marginal abstract. A severe criticism would object to occasional defects in the style, which do not, however, essentially impair the merit of the work. For instance, in Howe *v.* Bradley, page 31, instead of saying, that, in a certain case, *payment of a note cannot be demanded until the last day of grace*, he says, the *note itself* "cannot be demanded," &c. In Morton *v.* Barret, page 109, the abstract is, "the certificate of a consul of the death of an individual abroad is not sufficient proof of that fact." It should be, "is not *admissible evidence* of that fact." But on the whole, we are much pleased with the reporter's share of the present volume, with the exception of the printing, which, although superior to that of Mr. Shepley's volumes, is not in all cases correct, and of the index, which, like those of the very great majority of reports, is quite defective. We regret that with this volume, Mr. Appleton's labors as reporter are to close.

REPORTS OF THE INSPECTORS OF PRISONS, FOR THE COUNTY OF SUFFOLK, *on the House of Correction, House of Reformation, Gaol, House of Industry, and the Boston Lunatic Hospital.* December, 1842.

The inspectors of prisons for the county of Suffolk have just made their report for the last half of the year 1842; it embraces much interesting information. The inspectors appear to have performed their duty faithfully, having made thorough examinations of the various institutions in company with the officers, and having also

made inquiries of the prisoners themselves, out of the hearing of the officers, thus giving them an opportunity to state freely and without reserve, any instance of undue severity or unkind disregard of their welfare or reasonable wants, which they might have experienced. It speaks much for the officers, that there were but three or four complainants in all the different prisons, and for the inspectors, that they thoroughly investigated every instance of complaint however trivial it might seem to be. The course adopted by the inspectors, in this respect, appears to us to be of a most excellent tendency, when judiciously practised, by causing the officers to feel that there can be no concealment of any undue severity or improper conduct on their part; and also by exerting a healthy moral influence over the prisoners in assisting to restore to them their lost self-respect.

We have been most interested in the report relating to the house of correction, which appears to be in the same admirable condition for which it has hitherto been so remarkable. The whole number of prisoners on December 2, 1842, was 330, of whom 209 were males, and 121 were females. The following occurrence will illustrate the moral condition of this prison:

"On the fourth of November last, at 2 o'clock A. M., it was discovered that a fire had broken out in the brass nail foundery, which was afterwards ascertained to have arisen accidentally. The alarm of fire was given, and the officers turned out, and one entire division of prisoners, to the number of fifty, was turned out to assist in extinguishing the fire. This division consisted of the most trustworthy of the prisoners, who rendered their assistance with the greatest alacrity and perfect regularity, to extinguish the fire, which was soon put out, without any misconduct, or the slightest disturbance on the part of the prisoners."

THE RIGHTS OF CONSCIENCE AND OF PROPERTY; or the true issue of the Convent Question. By GEORGE TICKNOR CURTIS. Boston: Little & Brown, 1842.

Ever since the destruction of the Ursuline Convent, at Mount Benedict, in Charlestown, the question of indemnifying the sufferers, for the destruction of their property, has been periodically agitated in Massachusetts. At the last session of the legislature, a very able report was drawn up, for the committee to whom the subject was referred, by the author of the pamphlet before us; and more recently the subject has been pressed upon the public with great zeal and industry, and, we may also add, with considerable success. It will be seen, that an able writer in the present number of this magazine opposes the proposed indemnification, and gives the reasons for that view of the question, with great clearness and force. Without expressing any opinion upon the merits of this controversy, we feel bound to say, that we have read the work of Mr. Curtis with great pleasure; it is eloquently written, with powerful energy and striking illustration. We cannot but esteem it a most fortunate circumstance, that the discussion of a question which has in itself so many elements of discord, and is attended with so many exciting circumstances, has fallen to the part of those who are able to conduct it in a high and dignified tone of manly sincerity and truthfulness, which, of itself, must have a strong tendency to effect a settlement of this controversy upon sound principles.

AMERICAN JURIST AND LAW MAGAZINE. Edited by L. S. CUSHING and S. F. DIXON. January, 1843. Boston: Little & Brown.

The contents of this number of the Jurist are as follow: *Art.* I. Definition and History of the Law of Nations. II. Law of Foreign Corporations. III. Life of Lord Eldon. IV. On the Progress of Penitentiary Improvement in Europe and North America. V. On the Nature of that Interest which remains after a Conveyance of a Conditional or Determinable Fee. VI. Conveyances Fraudulent under the Bankrupt Law. Note to Article II. VII. Curwen's Journal and Letters. Digest of Cases. Critical Notices. List of New Publications. Index.

BANKRUPTS IN NEW HAMPSHIRE.

List of bankrupts in New Hampshire, from September 19, to December 31, inclusive. Continued from page 287.

Allen, Emery A., Hanover.
Angier, Rawson, Cornish.
Ayer, William, Manchester.
Ayer, James, Washington.
Avery, Ebenezer B., Alexandria.
Adams, Azahel L., Somasworth.
Austin, Hiram, Newport.
Aldrich, Luke C., Littleton.
Abbott, Moses S., Pittsburg.
Ash, Samuel, Bethlehem.
Ashley, Solomon W., Claremont.
Alexander, Josiah W., Derry.
Anderson, Levi, Brookline.
Alexander, Philip C., Nashua.
Austin, Reuben, Hopkinton.
Adams, Jeremiah, Unity.
Ayer, Alvah, Benton.
Atwood, Alexander B., Newport.
Atwood, Horace, Washington.

Brooks, Seth, Newport.
Boynton, Mark W., Loudon.
Boynton, Isaac, Andover.
Bingham, Feilding D., Nashua.
Blanchard, Porter, Concord.
Blanchard, Charles P., Concord.
Barron, Fletcher J., Lisbon.
Batchelder, Otis, Littleton.
Bidwell, Grove, Alstead.
Bartlett, Bailey, Candia.
Bartlett, Wise, Goshen.
Barker, Daniel Jr., Unity.
Bailey, Wilbra, Unity.
Breed, Walter, Unity.
Bailey, Ueal, Unity.
Bean, Joseph, Grantham.
Burtt, Thomas, Hillsboro'.
Breed, Eliphalet, Unity.
Breed, Eliphalet Jr., Unity.
Bryant, Andrew, Salem.
Brockway, Abner, Chesterfield.
Brickett, Abbott, Pembroke.
Braley, Moses, Manchester.
Brickett, James K., Hanover.
Bugbee, Hervey, Nashville.
Boynton, John, Mason.
Beard, Cleaveland, Mason.
Bragg, Albert, Sandwich.
Brooks, Chapin K., Stewartstown.
Brackett, William D., Londonderry.
Bellows, William, Walpole.
Bishop, James D., Dover.
Bruce, Samuel, Walpole.
Brown, Reuben S., Walpole.
Ballou, Hosea, Bristol.
Bean, John D., Gilford.
Brown, Stephen, Deering.
Beckwith, Amon, Nashua.
Brown, John, Jr., Boscawen.
Batchelder, Alfred J., Hampton.
Ball, Daniel, Richmond.

Currier, Charles, Manchester.
Currier, Alpha, Manchester.
Choate, Nathan, Derry.
Carter, Charles, Wakefield.
Curtis, Nathaniel, Hopkinton. Involuntary.
Cushing, John S. T., Manchester.
Cram, Henry, Walpole.
Chaney, Daniel, Somersworth.
Caswell, Thomas, New Market.
Crane, Ezra T., Keene.
Colby, Calvin, Haverhill.
Currier, Challis, Jr., Grantham.
Currier, Nathan B., Unity.
Cutting, William, Lyme.
Cushing, Nathan, Dover.
Colby, Enoch, Campton.
Carter, Humphrey, Concord.
Closson, John R., Canaan.
Corey, Oliver, Lyman.
Corey, James K., Lyman.
Cook, Caleb, Hillsboro'.
Crain, Elisha, Swanzey.
Colby, John, Wendell.
Campbell, Matthew M., Unity.
Clark, Horace, New London.
Corey, William B., Lisbon.
Colby, William, Manchester.
Clark, Carlos C., Claremont.
Clark, Josiah, Jr., Canaan.
Chapman, Ebenezer, Meredith.
Comstock, Walter W., Newport.
Combs, Isaac, Amherst.
Chase, Wells, New Market.
Carpenter, Warren, Surry.
Chadwick, Peter, Middleton.
Clough, Elbridge G., Lyme.
Colburn, Moses, Hollis.
Choate, Aaron, Enfield.
Carleton, Sidney, Winchester.
Chase, Henry, Deerfield.
Cutler, James, Nashua.
Coleman, James, Somersworth.
Carleton, James M., Dumbarton.
Carter, Rufus, Chesterfield.
Cressy, Albe, Cornish.
Cutter, Calvin, Dover.
Chesley, Isaac B., Wakefield.
Cass, Dudley M., Bristol.
Clay, Henry T., Manchester.
Corliss, Bailey, Wilmot.
Cox, Leonard J., Thornton.
Coffin, Daniel, Jr., Berlin.
Colby, Amos C., Whitefield.
Colby, Benaiah, Jr., Lancaster.
Cheney, Lyman, Bedford.
Cook, Freeman, Campton.
Chadwick, Samuel, Sutton.
Carter, Joseph, Concord.
Crawford, Ethan A., Carroll.
Currier, Daniel P., Deerfield
Cutter, Charles W., Portsmouth.
Chase, Hermon, Dover.
Colby, George J. L., Concord.
Chapin, Beraleel T., Manchester.

Davis, Edmund, Washington.
Dearborn, John C., Somersworth.
Dinsmore, Gilman, Claremont.
Duke, Amos H., Warner.
Durgin, Francis, Gilmanton.
Dame, William, Gilford.
Dunklee, Chester, Claremont.
Dustin Jonathan and Charles K. Whitney, Nashua.
Doolittle, Seth, 2d, Winchester.
Doolittle, Eliphalet, Hinsdale.
Dow, Lorenzo, New Boston.
Darling, Daniel, Franklin.
Davis, James H., Bristol.
Davis, Broughton, Chesterfield.
Dimond, William, Concord.
Daggett E. Child, New Boston.

Emerson, Isaac, Concord.
Eastman, Phineas, Jr., Canaan.
Elkins, David D., Pittsfield.
Etheridge, Martin R., Somersworth.
Eveleth, George, Cornish.
Emerson, Oliver, Newport.
Edmunster, James A., Cornish.
Eaton, Edwin D., Winchester.
Ellsworth, Moses, Warren.
Eastman, Thomas J., Newport.
Ely, George W., Littleton.
Eastman, Isaac, Concord.
Emerson, Charles, Portsmouth.

Fletcher, Rollin, Plaistow.
Farrar, Joseph H., Meredith.
Fisher, David B., Orford.
Fiske, Daniel M., Nashville.
Fuller, Philo, Goshen.
Floyd, Joseph, New Market.
Folsom, Arthur, Portsmouth.
Frink, Thomas, Keene.
Fulton, Samuel, Nashua.
Farr, John, Littleton.
Fitts, Christopher C., New London.
Fowler, Jeremiah, Springfield.
Fowler, Robert, Springfield.
Farnsworth, Calvin, Haverhill.
Farnsworth, Stephen, Haverhill.
Foster, Reuben, Bath.
Felch, Samuel B., Andover.
Foss, James, Meredith.
Frost, David D., Middleton.
Foster, Joseph, Stoddard.
Fowler, Ariel, Springfield.
Fowler, Sylvester, Springfield.
Fox, Edward, Sandwich.
Farr, Levi B., Marlow.
Frary, Nathaniel E., Bath.
Frary, Elisha, Bath.
Fuller, James Henry, Walpole.

Gilmore, William M., Newport.
Griffin, Asa, Surry.
Goldthwait, Alvan, Croydon.
Gilmore, Benjamin M., Newport.
Gould, Horace, Walpole.
Gile, Alfred A., Northfield.
Gould, Moses, Nashua.
Grant, Gilbert A., New Market.
Gilman, Caleb, Wakefield.
Griffin, Israel, Gorham.
Gannett, William, Haverhill.
Goss, Daniel, Centre Harbor.

Hill, Andrew N., Strafford.
Haskell, Nathaniel, Lebanon.
Huntoon, Charles C., Unity.
Hunt, Lawrence H., Claremont.
Harrington, Luther, Claremont.
Hardy, John B., Acworth.
Hoyt, Daniel N., Concord.
Hayden, Thomas G., Cornish.
Hale, Alonzo, Northfield.
Hobbs, George, Somersworth.
Hall, Benjamin, Bedford.
Harriman, Moses, Dalton.
Hunt, Joseph, Meredith.
Hayes, Reuben, Jr., Farmington.
Holmes, James C., Peterboro'.
Hodge, John M., Campton.
Hobart, Jonathan B., Bedford.
Hutchinson, Titus, Littleton.
Hannaford, William S., Sanbornton.
Hayden, Isaac, Dover.

Hadley, Stephen, Bethlehem.
Hook, John W., Plaistow.
Hall, Timothy, Portsmouth.
Hedgdon, Jacob, Tuftonboro'.
Harrison, George W., Nashua.
Howard, Joseph B., Wilton.
Hobbs, Josiah H., Wakefield.
Hamlet, John L., Nashua.
Heath, Daniel, Stewartstown.
Huggins, Samuel, Pitsburg.
Horn, William, Milan.
Hyde, Jacob, Tamworth.
Hart, Peter, Nashua.
Huntoon, John, Cornish.
Hunt, Caleb, Haverhill.
Hatch, David, Eaton.

Jackson, William W., Pittsfield.
Johnson, David G., Windham.
Jones, Sylvester, Keene.
James, Daniel C., Thornton.
Jackson, Florrest, Newport.
Johnson, Jonathan H., Meredith.
Johnson, Carleton, Bath.
Jewett, Eli, Alstead.
Jacobs, Burnham, Cornish.
Jones, Joseph D., Nashville.
Jackson, Willard, Shelburne.
Jackson, William, New Market.
Jenkins, James, Tuftenborough.

Kimball, Moses W., Derry.
Knight, Moren, Bath.
Kidder, Noah, Enfield.
Kidder, Francis, Montvernon.
Kimball, Samuel 2d, Hillsboro'.
Kenison, John, Wakefield
Kimball, Caleb P., Canaan.
Kent, William, Concord.
Keith, Samuel, Washington.
Karr, John, Bradford.
Kezer, Franklin, Haverhill.
Knight, Aaron, Haverhill.
Knight, J. C. L., Pitsburg.

Lyford, Jeremiah, Thornton.
Lakeman, Levi, Amherst.
Lovering, Gilbert, Weare.
Lewis, Frederick S., Newport.
Locke, Reuben, 2d, Alexandria.
Leach, John, Hopkinton.
Lamberton, Joseph, Plainfield.
Ladd, William M., Meredith.
Lock, Benjamin M., Chichester.
Loring, William, Francestown.
Lynch, Alexander, Mason.
Langdell, Edward, Montvernon.
Laighton, Benjamin D., Stratham.
Lull, Lewis, Warner.
Little, William D., Portsmouth.
Lang, David G., Whitefield.
Livingston, Henry D., Walpole.
Longley, Artemas, Nashua.

Moses, Dearborn B., Meredith.
Mooney, Joseph G., Holderness.
Mooney, Joel, Littleton.
Morton, Ezra, Cornish.
McCoy, Nathan, Thornton.
Marshall, Benjamin F., Dunbarton.
Moulton, William P., Gilford.
Moore, William P., Merrimac.
Morse, Eben'r. W., Littleton.
Metcalf, Theron, Claremont.
Marston, Dearborn, Hudson.
McKeen, John, Nashville.
Mahurin, Ephraim H., Columbia.
McAllaster, Isaac, Bedford.
McCrillis, David, Somersworth.
Merrill, Hiram K., Portsmouth.
Moors, Friend, Stoddard.
Merrill, John, Manchester.
McCluer, Charles E., Nashville.
Moulton, John H., Centre Harbor.
Mills, Caleb, Woodstock.
Marsh, John, Jr., Thornton.
Moulton, Joseph, Hillsborough.
Mudget, John W., Meredith.
Moulton, Daniel, Holderness.
Mellish, Samuel, Langden.
Mead, Joseph B., Walpole.
Matthews, Levi, Swanzey.
Mead, Samuel H., Nashua.
Merrill, Simon, Hampstead.
Moulton, Perkins, Shelburne.
Moulton, Mark, Ossipee.
Moulton, Hiram, Manchester.
Mussey, Thomas, Grantham.
Merrill, Dudley, Whitefield.
Moor, Daniel, Merrimac.
McAdams, Cyrus P., Washington.
Meserve, John S., New Market.
March, Benjamin F., Londonderry.

Niles, Joseph, Haverhill.
Norris, James S., Dover.
Neal, Nathaniel, Jr., Tuftonborough.
Newton, John C., } Gosport.
Newton, Joseph C., }
Neal, William, Portsmouth.
Norris, Benjamin R., Dorchester.
Nealey, John, Hopkinton.

Otis, William, Brookline.
Osgood, Dudley P., Gilmanton.
Olmstead, George N., Fitzwilliam.

Prescott, Mark, New Hampton.
Pollard, Ephraim, Charlestown.
Perkins, Jabesh L., Unity.
Peirce, Joel, Campton.
Phipps, Joseph, Henniker.
Pettigrew, Hoply Q., (involuntary,) Barnstead.
Pike, Abial D., Newport.
Purington, Elijah, Epping.
Peduzzi, Domenick, Portsmouth.
Potter, Chandler E., Concord.
Pettingill, John, Concord.
Page, Samuel, Jr., Haverhill.
Peck, Philip, Walpole.
Peverly, Robert H., Dover.
Preston, George A., Franklin.
Palmer, John N., Orford.
Page, Mary A., Exeter.
Proctor, James. Jr., Nashville.
Phillips, Sarah Ann, Nashville.
Palmer, Elijah, Orford.
Pike, John L., Middleton.
Pendexter, Jacob J., Portsmouth.
Perry, Zebina, Manchester.
Prescott, Samuel, New-Market.
Perkins, George K., Epping.
Pickering, William, Tuftonboro'.
Poland, Benjamin, Jr., Charlestown.
Patten, John, Jr., Alexandria.
Peebles, Seth H., Bath.
Palmer, Freeman, Littleton.
Peverly, Benjamin, Charlestown.
Page, John, Warner.

Quimby, Enoch, Sandwich.

Richard, Alvin, Unity.
Roundy, James, Unity.
Robinson, Isaac L., Meredith.
Rideout, Alpheus, Hollis.
Roys, Ward B., Bradford.
Rollins, Anthony, Somersworth.
Russell, John, Newport.
Rollins, Joseph S., Piermont.
Robinson, Miles, Greenfield.
Richardson, Willard, Canaan.
Redington, William E., Walpole.
Rollins, Sewall M., Grafton.
Rankin, David, Littleton.
Robbins, Nathan, Senbrook.
Remick, William, Rye.
Robinson, Andrew, Rochester.
Russell, Elijah, Manchester.
Roles, Samuel Q., Ossipee.
Richardson, Nathaniel W., Manchester.
Russell, Willard, Warren.
Ross, James B., Deering.

Smith Moses T., Unity.
Sleeper, Caleb A., Grafton.
Stockwell, Charles, Croyden.
Smith, Benjamin F., Nashua.
Severance, Lommi, Claremont.
Severance, Daniel, Claremont.
Sanborn, Ezra, Haverhill.
Sargent, Jacob, Thornton.
Stetson, Charles S., Haverhill.
Spalding, Jonathan, Grantham.
Smith, Reuben, Unity.
Sleeper, Sanborn, Hudson.
Senter, Charles, Hudson.
Sanborn, Stephen, New Hampton.
Smith, Nehemiah, Grafton.
Stephens, John H., Littleton.
Stevens, William S., Orford.
Sleeper, James M., Meredith
Smith, William, 2d, Unity.
Sleeper, John O., Haverhill.
Stockwell, Emmons, Lebanon.
Seaver, Thomas, } Walpole.
Seaver, Thomas H., }
Smith, Samuel S., Durham.
Seavy, Joseph, Dover.
Spalding, Warren C., Grantham.
Stevens, Joseph H., Warren.
Sherwell, Jesse K., Warren.
Stevens, John L., Warren.
Stow, Joseph, Haverhill.
Spring, John D., Milford.
Shores, Luther W., New Hampton.
Scott, Robert, Lyme.
Smith, Ebenezer H., Manchester.
Smith, Potter, Shelburne.
Sawyer, David, Grantham.
Swain, Levi, Gilford.
Smith, Christopher, Grafton.
Stanley, Sumner, Hopkinton.
Saunders, Theodore, Merrimac.
Stevens, James, Warner.

Torr, Jonathan H., Rochester.
Towle, William, Dover.
Tuttle, James, Haverhill.
Tilton, Stephen, Meredith.
Tufts, Walter, Alstead.
Tobey, William, Portsmouth.
Taylor, Jonathan, Danbury.
Tucker, George, Grafton.
Taft, George W., Cornish.
Tinkham, Ruel, Lyme.
Tay, Albert J., Meredith.
Tompson, John A., Nashville.
Turner, Harris, Lyme.
Turell, Charles, Nashua.
Tinkham, Leonard B., Walpole.
Towns, Seth, Roxbury.
Taft, Lucius, Keene.
Tilton, David, Meredith.
Tyler, Edwin, Landaff.
Tilton, Newell, Meredith.
Templeton, Moses, Acworth.
Tucker, Benjamin, Thornton.

Underwood, Hanson, Pittsfield.

Virgin, William W., Concord.
Very, Daniel, Swanzey.

Wadleigh, Chase W., Sanbornton.
Whittemore, Jacob P., Hillsboro'.
Wiggin, Henry Y., Exeter.
Winn, Isaac W., Nashville.
Worthen, Moses P., Bridgwater.
Whipple, Jeremiah P., Dunbarton.
Welch, Francis, Hampstead.
Wilson, Nathaniel, Canaan.
Wright, Lorenzo N., Newport.
Wallis, Samuel, New Hampton.
Whitehouse, George, Dover.
Wissell, Jacob B., Ossipee.
Wiggin, Kinsley L., Tuftonboro'.
Walker, Alanson, Grafton.
Way, Reynold, Newport.
Waterman, Amasa, Hillsborough.
Willard, Josiah B., Newport.
Winchester, Luther, Hill.
Woodbury, Moses W., New Boston.
Wells, Jeremiah, Manchester.
Whitehouse, Jacob, Rochester.
Weston, George, Mason.
Wetherell, George, Bath.
Walker, John S., (mariner,) } Portsmouth.
Whitney, Charles K., & Jona. Dustin, } Nashua.
Wheeler, Reuben, Merrimac.
Woods, Aaron, Nashville.
Willand, John F., Ossipee
Whitney, Jesse, Nashua.
Willey, Selden, Benton.
Wright, Alvah C., Benton.
Wheeler, Jonas, Lyndeboro'.
Webster, Charles, Manchester.
Wallis, Henry, Kilkenny.
Worthing, Moses, Jefferson.
Weare, Daniel C., Dalton.
Wenzell, Charles H., Troy.
Waterman, Lucius, Dublin.
Walker, Flanders, Bow.
Whittier, Richard B., Warner.
Woolson, Elijah S., Littleton.
Wright, Ezra L., Washington.
Wallace, John M., Warner.
Woodes, James L., Barnstead.

Young, James S., Campton.

BANKRUPTS IN NEW YORK.

From December 26 to January 25. Continued from page 432. The number is 201.

Arnold, Dudley P., New York.
Adlard, George, Jamaica.
Arrable, John S., Hudson. (Compulsory.)
Adams, Samuel R., New York.
Andrews, Thomas, New York.
Anderson, David, Brooklyn.

Barnes, Gilbert W., New York.
Burnham, Oliver R., New York.
Benson, John G., New York.
Brown, Moses C., New York.
Buffum, David, New York.
Bennett, Philip, Sr., New York.
Bloomfield, William G., Newburg.
Beal, Abner, New York.
Beer, William T., New York.
Brown, John J., New York.
Baldwin, Cyrus, New York.
Brooks, Peter, New York.
Burling, Stephen, New Rochelle.
Brower, Edward D., New York.
Brown, Joshua, New York.
Brinckerhoff, John D. W., New York.
Beach, Joshua M., and Theodore F. Bailey, } N. York. (Compulsory.)
Benedict, Jesse W., New York.
Boyd, Robert R., New York.
Blow, Robert, New York.
Bowre, Gilbert, Brooklyn.
Boyd, Robert R., New York.
Brush, Philander, New York.
Behrend, Joel, New York.
Bertholf, Gilbert, New York.
Butler, Thomas, New York.
Barker, David R., Mamaroneck.
Babcock, Nichols H., New York.
Burtsell, John L., New York.
Bleecker, Joseph R., New York.
Blake, Anson, Brooklyn.

Crosby, Orrin H., New York.
Cummings, Moody, New York.
Carroll, Nicholas, New York.
Canfield, Philemon, New York.
Crommelin, Edward, New York.
Codwise, Charles F., New York.
Cocks, Thomas, New York.
Crane, Daniel, Jr., New York.
Corse, Barney, New York.
Cook, James B., New York.
Cutler, Henry, and Thurston W. Cutler, } Warwarsing. (Compulsory.)
Coffin, Henry P., Brooklyn.
Colgate, Charles, Brooklyn.
Coggery, William J., Yorkville.

Doncourt, Joseph, Hempstead.
Dyson, Robert, New York.
Donnel, Joseph F., New York.
Davis, John, New York.
Denton, Benjamin J., New York. (Compulsory.)

Embree, Laurence E., New York.
Evans, John, Poughkeepsie.
Erben, Henry, New York.
Earl, Tarleton B., New York.

Fowler, John, New York.
Foster, Edward, New York.
Finch, Nelson, Prattsville.
Ferris, Nelson, New Paltz.
Foster, Augustus S., New York.
Foster, Joseph H., New York.

Green, Charles, New York.
Gregory, Uriah, Poughkeepsie,
Gourard, John B. F. F., N. York.
Gale, Edmund L., New York.

Haring, John I., New York.
Husted, Joseph B., Rye.
Hubbs, George K., Smithtown.
Holt, Stephen, New York.
Hahn, Joseph, New York.
Howell, Daniel T., Goshen.
Hyatt, Minner, Olive.
Hasbrouck, James O., Warwarsing.
Hall, George, Brooklyn.
Horton, Francis, Sag Harbor.
Hanna, Robert G., New York.
Hiler, Selah, New York.
Hunter, Lewis, New York.
House, John J., New York.
Holmes, George, Hyde Park.
Hough, David, New York.
Hough, David, Jr., New York.
Hudson, Charles, Brooklyn.
Hotchkin, Samuel, New York.
Hamilton, James H., New York.
Hammond, Achilles V., N. York.
Hills, Stephen, Jr., New York.
Havens, Henry W., New York.

Irving, Lewis G., Yonkers.
Isaacs, Theodore E., New York.

Johnson, Samuel, New York.
Jimmerson, Josiah F., New York.
Jackson, Jeremiah, New York.
Jesup, William B., New York.
Johnson, James C., Goshen.
Johnson, Jeromus, Goshen.
Joice, Erastus V., New York.

Kirby, Joseph, Rye.
Knapp, George W., New Paltz Landing.
Kebrigan, Michael, New York. (Compulsory.)

Lafforge, John A., New York.
Lichtenhein, Simon A., N. York.
Lincoln, Bradford, New York.
Lugar, George C., New York.
Lane, Henry, New York.
Louis, Francis J., New York.

Mott, Stephen G., New York.
McKinstrey, Henry, New York.
Montgomery, Isabella, and William R. Montgomery, } New York. Copartners.
McGregor, John, Brooklyn.
Mead, William H., New York.
Martin, Conklin S., New York.
McDonnell, William, New York.
McGregor, John, Brooklyn.
Mills, William O., New York.
Mead, Walter H., New York.
Mackie, John, Rye.
Mead, Leander, New York.
Moody, Thomas M., New York.
Morgan, George C., New York.
Michaels, Jay A., New York.
Moor, Nathaniel, Brooklyn.
Meyers, Morris, New York.
Morris, Robert, New York.
Macy, William S., New York.
Morgan, Minot C., New York.
Mott, Samuel C., New York. (Compulsory.)
Manning, John A., New York.
Martin, Elhanan, Brooklyn.

Mills, John, Jr., New York.
M'Laughlin, Andrew J., Neversink.

Norton, Edward, New York.
Nichols, John T. E., Brooklyn.
North, George, Kingston.
Nichols, Perkins, New York.
Naylor, William, New York.

Oddie, Walter M., Brooklyn.
Ogden, Henry, Poughkeepsie.
Oliver, Thomas, New York.
Osborn, Marmaduke, New York.

Phillips, Thomas, New York.
Provost, George, New York.
Prince, Albert S., Flushing.
Penniman, John, New York.
Perry, George M., New York.
Prince William R., Flushing.

Rich, Thomas, Warwarsing.
Reynolds, William, New York.
Rice, Leverett E., New York.
Rogers, Edward N., New York.
Rohr, John, New York.
Reed, Addison, New York.
Robertson, John C., New York.
Russell, Isaac F., Rhinebeck.

Smith, Thomas W., New York.
Seaman, John H., Jr., Huntingdon.
Stillwell, George W., Brooklyn.
Spanier, Louis, New York.
Shumway, Dolerval, New York.
Sunfleet, William, Hudson.
Starr, Samuel G., New York.
Sharp, William, New York.
Sutton, Benjamin, New York.
Spofford, Thomas, New York.
Smalley, Joseph, New York.
Snook, John B., New York.
Seymour, William, New York.

Throckmorton, Reid R., Brooklyn.
Tuthill, James, Riverhead.
Tombs, John, New York.
Tuthill, David Jr., Riverhead.
Thompson, William H., N. York. (Compulsory.)
Terry, William, New York.
Thompson, David, New York.
Thompson, Alexander, N. York.

Underhill, Elnathan, New York.
Underhill, David, New York.

Van Tuyl, John Y., New York.
Van Norden, William, N. York.
Van Duser, James, Mimsink.
Vredenberg, William, Kingston.
Vredenberg, David, Olive.
Van Emberg, William, N. York.

White, William R., New York.
Wilson, Stephen T., New York.
Whipple, Richard, Brooklyn.
Williams, Ebenezer S., Brooklyn.
Wetmore, Erastus, New York.
Warne, Marinus W., New York.
Warner, Effingham H., N. York.
Wilson, Jonathan D., Kingston.
Wagstaff, William, New York.
White, Thomas, Brooklyn.

BANKRUPTS IN MASSACHUSETTS.

From December 26 to January 23. Continued from page 431. The number is 250.

Alden, Cyrus, Fall River.
Atwood, Payn G., Wellfleet.
Alden, Francis, Dedham.
Aldrich, Stephen A., and Stephen H. Thayer, Men-don. Copartners.
Allen, Joseph, Worcester.
Ames, Asa, Boston. (Compulsory.)

Brown, Winthrop, Ipswich.
Bourne, James, and Samuel B. Willis, Boston. Co-partners.
Bliss, Albert, Pawtucket.
Burghardt, Heman D., Stockbridge
Byron, Frederick A., Salem.
Bassett, Isaac M. Roxbury.
Burnham, Joseph, Haverhill.
Billings, Luther, Watertown.
Bird, Thomas M., Dorchester.
Brown, Nathaniel, Lowell.
Barker, Daniel E., Hancock.
Blake, Joseph H., Lowell.
Bowman, Levi, Westborough.
Busch, William W., Pittsfield.
Brigham, Charles F., Prescott.
Berry, Joseph C., Harwich.
Barry, John H., Boston.
Breed, Nehemiah A., Lynn.
Bell, William S., Boston.
Butler, Micah M., Boston.
Blush, Oliver, and William D. Blush, Middlefield. Copartners.
Brimhall, Joel, Worcester.
Blanchard, Simon T., Boston.
Bartlett, Eber, Mendon.
Brigham, Orlando S., Hubbardston.
Benson, Mellen, Mendon.
Bradley, Charles, Dracut.
Blake, Nathaniel, Boston.
Blaisdell, Timothy R., Lowell.

Combs, William, Warren.
Cary, Jonathan, North Brookfield.
Cheney, John E., Boston.
Crehore, John A., Milton.
Carral, Thomas, Boston.
Crosby, Abiel R., Lowell.
Colby, Moses F., Boston.
Clapp, Joel, Boston.
Coggeshall, Timothy, Boston.
Cruden, Michael, Lowell.
Caldwell, Silas M., Hancock.
Chamberlain, Eben., Worcester.
Conant, Cyrus, Charlestown.
Cushing, Solomon B., Boston.
Chandler, Oliver, Jr., Boston.
Clark, Nathan, Milbury.
Clark, Thomas J. G., Holliston.
Campbell, John, Boston.
Clark, Erastus, Barre.
Conant, John, Provincetown.
Coolidge, George, Boston.
Coburn, Charles, Dedham.
Cole, Elisha, Southbridge.
Coop, William A., Adams.
Corson, William W., Sutton.
Chase, Davis, New Bedford.
Cass, Parker, Watertown.

Dana, Leander M., Sutton.
Dyer, John, Charlestown.
De Laporte, Theodore C., Boston.
Dickson, Shadrach, Boston.
Dimick, William K., Brimfield.
Davis, David H., Boston.
Davis, Benjamin F., Brookfield.
Darling, Cyrus, and William M. Bellows, Worcester. Copartners.
Draper, William, Uxbridge.

Eastman, William H., Boston.
Eastman, John H., Stoneham.
Earle, William B., Leicester.

Frisbee, Elbridge G., Pittsfield.
Fellows, David, Haverhill.
Forbes, John M., Deerfield.
Frizell, Lorenzo, Worcester.
Fuller, Daniel P., Andover.
Fay, Lyman, Northbridge.
Faxon, Asaph A., Scituate.
Foster, Ebenezer, Haverhill.
Foot, Lewis, Haverhill.
French, Jefferson, Holliston.
Ford, Stillman, Savoy.
Felch, John, Natick.
Frost, Nathan, Boston.
Farnsworth, Ephraim, Milbury.

Griswold, William H., Andover.
Griffin, Gilman, Medford.
Graves, Henry, North Brookfield.
Green, Ira, Ashby.
Guild, Curtis, Boston.
Gipson, William H., Boston.
Grose, William, Jr., Lynn.
Goodridge, William, Beverly.
Gilbert, Daniel, Boston.

Hilliard, Samuel, Boston.
Hale, Isaac, Dracut.
Hall, William, Adams.
Hubbard, Gardiner G., Boston.
Hastings, Emery, Lancaster.
Holmes, Francis, Boston.
Heath, Benjamin, Tyringham.
Humphrey, John, Sandisfield.
Howe, Benjamin, Belchertown.
Howard, Franklin, Lancaster.
Harlow, Ephraim, Fall River.
Holman, John, Wilbraham.
Horne, Calvin, Cambridge.
Howland, Bradford, Dartmouth.
Howe, Joel, West Boylston.
Huntoon, William R., Boston.
Hodgkins, John, Gloucester.
Hayden, Ezekiel, Cambridge.
Hale, William P., North Brookfield.
Hawkes, Benjamin, Charlestown.
Hobart, Enoch, and Enoch A. Hobart, Boston. Copartners.
Hyde, Nathan D., Boston.
Harden, Nehemiah, Harwich.
Hall, John C., Westford.

Hodgson, Henry B., Boston.
Higgins, Alvah M., Ware.
Hodge, Nehemiah, Adams.
Hoogs, Octavian, Boston.
Hopkins, Goheth A., Boston.
Howe, Windsor, Lowell.

Josselyn, Branch, Boston.
Jeffrey, Stephen W., Worcester.
Jones, Orin, Lowell.
Johnson, Samuel, Haverhill.
Jenks, David, Wrentham.
James, Elihu, Charlestown.
Johnson, Isaac W., Lee.
Jones, Daniel R., and Ira W. Jones, Beckett. Copartners.
Jacques, Samuel, Jr., Somerville.

Kidder, John R., Cambridge.
Kenerson, Isaac, New Bedford.
Knowles, John O., Truro.
King, Isaac, Stoughton.
Kitchen, William, Lowell.

Littlehale, Daniel, Tyngsborough.
Larrabee, John H., Danvers.
Lawton, Moses, Fall River.
Litchfield, Lyman, Chesterfield.
Loomer, Newton, Springfield.
Luce, West, Rochester.
Ludden, Sanford, North Brookfield.
Lombard, Franklin, Dana.
Lord, David, Roxbury.
Lombard, Loring L., Boston.
Leonard, Joseph, Boston.
Lummus, Aaron, Lynn.
Lelund, John, and George Sabin, Milbury. Copartners

Metcalf, Alfred E., Watertown.
Morse, Samuel, Coleraine.
Moore, Hiram B., Lowell.
Miller, Benjamin, Westminster.
Miller, Harriet, Otis.
Morse, Calvin, Cambridge.
Melson, Jonathan, Lowell.
Magown, Matthew S., Worcester.
Mowatt, Commodore, Methuen.
Mulliken, John, Lowell.
Moran, Thomas, Thomas Meginnis, and John D. Sullivan, (Compulsory.) Lowell. Copartners.

Martin, Wm. B., Northampton.
Mixer, Elijah, Lowell.
Mason, Calvin, Cheshire.

Nash, Aaron P., Weymouth.
Newhall, David, Danvers.
Nasson, George, Boston.
Nelson, Lyman A., Warren.
Newell, Constantine F., Charlestown.
Newcomb, John J., Boston.

Potter Frederick A., North Brookfield.
Proctor, Charles B., Lowell.
Peirce, Josiah, Jr., Adams.
Page, Benjamin, Cohassett.
Parker, John, Natick.
Pickett, Joseph, Beverly.
Perry, Orves B., Boston.
Parlin, Silas W., Westford.
Parlin, Asaph, Acton.
Parker, Joseph, Lowell.
Phillips, Gideon, and Charles Winslow, Lynn. Copartners.

Rutherford, Moses D., Salem.
Reed, Albert, 2d., Abington.
Rice, Merrick, Springfield.
Read, Paddock R., Fall River.
Rice, Edmund, Brighton.
Richardson, David M., Andover.
Ripley, Ebenezer, Barre.
Rider, Daniel, Holliston.

Shattuck, William, Pepperell.
Shumway, Emery, Greenwich.
Simmons, Willard S., Boston.
Smith, William B., Lowell.
Smith, Nathan, Otis.
Smith, Loyal T., Sheffield.
Smith, Wm. S., North Brookfield.
Stover, Sylvester, Boston.
Sleeper, Ezekiel G., Lowell.
Spelman, Sol. C., and William G. Spelman, Wilbraham. Copartners.
Sears, Sardis, Prescott.
Sargent, Taffan, Amesbury.
Steele, Azel E., Boston.
Shattuck, Gardner, Townsend.
Sibley, Jonas L., and Jonas A. Hovey, Boston. Copartners.

Stratton, Charles, Worcester.
Smith, Elisha, Boston.
Stevens, Samuel G., Ashburnham.
Studley, Joseph H., Hanover.
Sawyer, Edmund, Boston.
Silver, Isaiah, Jr., Methuen.
Simpson, Aaron, Douglass.
Sloan, Jacob D., Boston.

Tidd, William, Woburn.
Thomas, Bailey, Weymouth.
Tufts, Elbridge, Cambridge.
Tallman, William B., New Bedford.
Tenney, Albert G., Boston.
Towle, Newell, Roxbury.
Tilton, Abraham, Hopkinton.
Thompson, Joseph, Charlestown.
Tibbetts, Timothy, Boston.
Titcomb, Edward, Jr., Newburyport.
Tyler, Benjamin, Lancaster.

Upham, Jacob, Lowell.

Valentine, Gill, Northborough.

Whiting, Solon, Lancaster.
White, John M., Boston.
Wiggin, Oliver P., Newburyport.
Wood, Erastus R., Springfield.
Whitmore, Amos, and Samuel E. Holbrook, Boston. Copartners
White, Franklin J. W., Lowell.
Whitman, Christopher, Lowell.
Wiggin, Joshua D., Chapin
Wilson, Charles, Barre.
Webber, Thomas K., Brookfield.
Whiting, Thomas, Concord.
Wigglesworth, William, Newbury.
Waters, Samuel, Orra Goodell, and Horace Waters, Milbury. Copartners.
Ward, Joseph H., Boston.
Watson, Shepard, Dracut.
Winsor, Olney, Boston.
Whitcomb, Charles F., East Randolph.
Wyman, Luther, Woburn.
Worthen, Jonathan P., Lowell.

Young, Rufus A., Uxbridge.

OBITUARY NOTICES.

In Baltimore, Md., very suddenly, of bilious colic, FRANCIS S. KEY, Esq., of Washington, D. C., aged about 50. He was a man of great personal worth, and highly respected in the community where he resided. His reputation as a lawyer, and especially as an eloquent advocate, was deservedly high. His mind was well stored with legal learning, and his literary tastes and attainments were highly distinguished. He was the author of the popular national song of the "Star Spangled Banner." When his death was announced in Washington, a meeting of the bar and officers of the Supreme Court was held, when appropriate resolutions were passed, and a committee was appointed to go to Baltimore and attend, in behalf of the meeting, the funeral of the deceased. Mr. Key was the brother-in-law of Chief Justice Taney. He has left a family of six daughters and two sons.

In Lexington, Ky., December 29, Hon. THOMAS M. HICKEY, formerly and for many years, judge of that circuit.

In the city of New York, on January 9, STEVENS THOMPSON MASON, Esq., aged 31. He was a native of Virginia — the only son of Gen. John Thomson Mason, of Kentucky. At the early age of nineteen Mr. Mason was appointed secretary of the territorial government of Michigan, and acted as governor of the territory until it was admitted into the union as a sovereign state, when he was twice elected to the gubernatorial chair by the voice of the people. Having retired from political life, he went about a year since to New York city, where he had numerous friends, as well as connexions to whom he was allied by marriage, and pursued the practice of the law, devoting himself to his professional pursuits.